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July 11, 2007

**VIA OVERNIGHT MAIL and EMAIL**

Hon. Henry Waxman, Chairman  
Hon. Tom Davis, Ranking Minority Member  
United States House of Representatives  
Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, DC 20515-6143

Re: June 19, 2007, Letter Requesting Information Regarding Concerns  
Expressed Arising From the "File Sharing Programs and Technological  
Features to Induce Users to Share" United States Patent and Trademark  
Office Report

Dear Honorable Representatives Waxman, Davis and Members of the House Committee on Oversight and Government Reform:

Thank you for allowing StreamCast Networks, Inc. ("StreamCast") the opportunity to attempt to address, in writing, concerns expressed by this Committee that have arisen from the "File Sharing Programs and Technological Features to Induce Users to Share" United States Patent and Trademark Office report made public in March 2007 (the "PTO Report"). The PTO Report attacks peer-to-peer (P2P) software for causing governmental users and general consumers to inadvertently share unintended files. Thank you also for allowing us additional time, until July 11, 2007, to attempt to comprehensively address the issues set out in the Committee's letter of June 19, 2007.

The PTO Report presents inexplicable and unsubstantiated theories that P2P companies, including StreamCast, created "duping" schemes to trick its users into breaking the law and also suggests that P2P software is a factor in terrorism, child pornography and identity theft.

P2P software and networking is often incorrectly blamed or vilified for privacy and security breaches, when in fact many of the problems associated with the use of some advanced technical products, including computer software applications, can be traced to a user's rudimentary technical or computer skills or the lack of complete documentation by the maker. StreamCast, however, succeeds in making its P2P software programs, Morpheus™ and Morpheus Ultra™, easy to safely use even if the user is a

neophyte not even close to being a technophile<sup>1</sup>.

We go to great lengths to ensure that users are fully informed in easy to understand language, and easy to perform steps, are in control and only share the files they wish to share – and nothing private or confidential inadvertently. Morpheus use is also easy to be restricted by parents, or supervisors, and easy to completely and fully uninstall.

Several “high profile security breaches” have been reported stemming from users inadvertently permitting sensitive information to be shared from their computers over P2P Networks. It has been reported that such misuse of P2P file-sharing technology has resulted in the sharing of secret military documents, social security numbers, tax and health records, and other sensitive documents. While it may be easy enough to blame P2P technology, at least as far as the use of Morpheus is concerned, personal behavior and responsibility, not the software design or lack of proper documentation or disclosures, is the real determining factor in whether such events have occurred, or will occur.

It is important to note that we believe that some types of computer software programs are generally not authorized to be used or installed on corporate or governmental computer issued equipment to employees or workers. P2P software usually falls under or into this category. Unlike other types of communication or sharing software that come bundled with a PC or operating system (such as Instant Messaging and email), Morpheus does not come pre-installed in computers and never magically installs itself and begins sharing sensitive documents. An individual must knowingly and manually download and install Morpheus.

As a means of furthering this Committee’s understanding of issues raised in the PTO Report, we hope to help shine a brighter light on how StreamCast’s P2P software operates and what is being done to provide even better privacy and security while protecting against inadvertent copyright infringement and advancing what is indisputably powerful and useful technology. It is our belief that public policy decisions should be based on facts not myths. We hope that our response will help to bring balance to the inaccuracies of the PTO Report and be a positive addition to the overall debate on Peer-to-Peer technologies and internet-based privacy and security issues in general.

We have divided our response into the following four sections:

- I. Introduction
- II. P2P Technology Background: How It Works
- III. Response to the Committee’s Questions
- IV. Proposed Solutions

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<sup>1</sup> Morpheus and Morpheus Ultra are similar in all respects, except that Morpheus Ultra does not include banner advertisements within the user interface, and typically has not and does not come with any additional value added software, such as the web search toolbar that is delivered together with Morpheus, and, therefore, throughout this response references to Morpheus or the application, client or software, are intended to include both Morpheus and Morpheus Ultra except as may otherwise be indicated.

Before attempting to address each of the nine questions posed by the Committee to the best of our ability given the short time frame and limited resources of our very small company, there are several issues that we wish to address that may not be readily apparent to the Committee by reading the PTO Report which we will cover in this "Introduction."

Following this introduction we included some excerpts from or references to a current magazine article that we believe does an excellent job in explaining P2P technology in terms that we believe the Members of the Committee will easily understand.

We conclude our response with a "Proposed Solutions" section that presents what we believe to be some common sense solutions to the potential security, privacy and infringement issues that this Committee has expressed concerns about, as well as additional modifications made to Morpheus. While we don't pretend that we alone may be able to offer all the solutions, we are certainly engaged in this discussion and wish to be part of collaborative solutions and not the cause of significant problems. Indeed, we believe that we already are part of the solution and not part of the problem as the PTO Report has might have one believing.

Finally, it is not our intention to offend anyone with the frankness of our responses to the Committee's letter but we believe the seriousness of this inquiry should be met with just as serious a response in order to attempt to provide the Committee with accurate information and not sugar coat our response to win any political 'brownie' points -- this subject matter deserves nothing less. The employees, officers, and directors of StreamCast are proud to be American. StreamCast Networks, Inc is based in the Los Angeles, California area and is incorporated in the State of Oregon, where the company was originally incorporated in 1997.

### **I. Introduction**

First, StreamCast has been responsive to government and regulatory concerns by participating in the development and utilization of standardized, clear and easy to understand consumer disclosures. Most commercial P2P software, including StreamCast's, has been improved through a combination of voluntary company initiatives, P2P association standards, market forces and governmental and regulatory recommendations. For us some of these improvements are reflected in a clear warning on P2P usage risks on the home page of our software interface and informational web pages on how consumers can protect themselves from all sorts of risks inherent in many means of communication over the internet, but in particular how to eliminate even the minimal risks that might be associated with poor usage of Morpheus. We also warn and provide means to protect against child exploitation, and provide means of reporting suspected child exploitation to authorities.

The PTO Report fallaciously alleges that Morpheus users are being "tricked" or "duped" into inadvertently or unintentionally sharing files. This is unequivocally untrue. It is not StreamCast's intention or practice to include "technological features to induce users to share" files beyond those files that users want to, and intentionally and knowingly, share. In fact, contrary to the conclusions of the

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PTO Report, Morpheus software deliberately includes features to prevent the sharing of files and folders that users do not intend to share.<sup>2</sup>

Second, the PTO Report is out-dated. Many of the companies that the PTO Report purports to study are out of business or, as is the case with StreamCast, our software functions in a manner which is substantially different than the PTO Report purports to detail. Unfortunately, the result today is that the commercial companies that could work with the USPTO and other U.S. governmental and regulatory agencies to positively impact P2P use and protect US citizens' privacy and this country's security have largely been superseded by open source and foreign developers that are beyond the control of the U.S. Government or its regulatory agencies.

Third, the authors of the PTO Report failed to cover this subject in an objective and unbiased manner, unlike the more balanced investigation from the Federal Trade Commission which published some of its findings in its "Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues" report presented to Congress on June 23, 2005. In the FTC report, the FTC concluded that:

*"...there is no evidence that using P2P file-sharing programs are any more risk than surfing websites, downloading software, or using e-mail or instant messaging."*

Furthermore, the PTO Report ignores documented reports that personal files have more often been inadvertently shared through Microsoft's File and Printer Sharing tools, for example, than through P2P applications.<sup>3</sup> Regardless of the risks associated with other technologies, the risks associated with StreamCast's software are addressed, and refuted herein, and where there is room for StreamCast to make even greater improvements StreamCast has done so and will continue to do so.

The PTO Report, which includes over 90 footnotes referencing approximately 80 other documents totaling possibly thousands of pages, did not once mention the findings of the FTC Report. Nor did the PTO Report include the testimony of Mr. Howard Beales, Director, Bureau of Consumer Protection, FTC before the Senate Commerce Committee Subcommittee on Competition in June 23, 2004, where he stated:

*"...For example, consumers can use e-mail to send or receive copyrighted materials, pornography, viruses, and spyware. Similarly, search engine technology may expose consumers inadvertently to child pornography, viruses, and spyware. Videotape recorders and compact disc recorders may be used in violation of copyright laws by individuals who are unaware that they are doing so. Many risks associated with P2P file-sharing seem to result largely from the actions of individual users, rather than from the operation of the P2P file-sharing software itself."*

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<sup>2</sup> See URL for Morpheus Consumer Disclosures Guide - the purpose of the Morpheus User Guide document is to outline and illustrate how StreamCast Networks, Inc. and the Morpheus client software operates in providing consumer disclosures in efforts to make readily available to users of the software information regarding installation, configuration, privacy, data security, confidentiality, and prevent the sharing of inappropriate (including private) file content.

<sup>3</sup> <http://support.microsoft.com/kb/304040> - With Microsoft Windows XP, you can share files and documents with other users on your computer and with other users on a network. There is a new user interface (UI) named Simple File Sharing and a new Shared Documents feature

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*Although the Commission has required warnings with respect to inherently dangerous products in appropriate cases, we are not aware of any basis under the FTC Act for distinguishing P2P from other neutral consumer technologies.*

*Distributors of P2P file-sharing programs could also violate Section 5 of the FTC Act if they made deceptive claims about such risks. The FTC staff reviewed the disclosures on the Web sites of the ten most popular P2P file-sharing software program distributors. Consumers have downloaded these ten file-sharing programs more than 640 million times. The purpose of this review was to determine whether these distributors misrepresent the risks associated with their P2P file-sharing programs.*

*The FTC staff's review revealed that distributors of P2P file-sharing programs use a variety of means to convey risk information to consumers. Distributors disclose risk information on their own Web sites or in their licensing agreements with consumers. Some distributors also provide consumers with a hyperlink to risk information at [www.P2PUnited.org](http://www.P2PUnited.org), one of the P2P file-sharing software industry's trade associations. In addition, one of the main portals for downloading such programs, [www.Download.com](http://www.Download.com), discloses some risk information on its site.*

*FTC staff reviewed and analyzed the representations made by these distributors about the risks associated with downloading and using their programs. None of these representations appear on their face to be false or misleading."*

In fact, the PTO Report fails to mention any of the countless number of independent research reports (not funded by the entertainment industry), testimony, court records, governmental reports or news articles that have been complimentary to and of P2P technology, file-sharing or the companies subject to this PTO Report, including StreamCast. The PTO Report ignores recent articles in favor of outdated statistics. The PTO Report does not cite one known instance of a user's identity or national security being compromised by using StreamCast's Morpheus P2P software. The report provides no case history of any Morpheus user ever being found liable for even sued for copyright infringement.

The PTO Report also draws inaccurate conclusions from the *MGM v Grokster* Supreme Court decision. It cites no passage from the Supreme Court decision to support the notion that the findings in *Grokster* indicated inadvertent sharing as having a signaling effect of a duping scheme.

Instead, the PTO Report creates "hypothetical scenarios" of pure fiction in an attempt to make its points and support obviously biased conclusions. For just one example of the sensationalistic hyperbole used, the reader merely needs to turn to the beginning of the PTO Report on page four where the PTO Report seeks to clarify the definition of inducement and duping by repeating a comment made in the 1800's by Associate Supreme Court Justice Story (1797- 1845):

*... "Justice Story's classic example of duping involves a murderer who has food poisoned and delivered by a child who does not intend to harm the intended victim."*

Attempting to somehow connect murder, food poisoning and the recruitment of a child to commit a crime, as relayed by Justice Story in the 1800's with today's P2P technology development and distribution appears absurd.

Furthermore, the PTO Report fails to analyze the current in-use software of StreamCast's Morpheus (and the others) in favor of discussing outdated software versions that in some instances are over four years old and not being distributed by any company and in all likelihood not in use by any computer user today. The PTO Report was masterly written to confuse even the most technologically savvy reader by intertwining the software functionality of all five P2P file-sharing programs with one another and moving back and forth between newer and older versions of all five software application (but not current versions) in such a way that makes it nearly impossible to define a particular software's behavior on its own. The PTO Report skillfully presents so that the reader assumes that all the file sharing programs examined each covertly incorporated features that the PTO Report found to be negative. And when there was something positive, many times the PTO Report would not attribute which software was positive, or somehow would attempt to turn that "positive" into a "negative."

Fourth, the PTO Report repeatedly refers to P2P United's Code of Conduct. P2P United was a non-profit trade organization established in August 2003 by the leading P2P file-sharing technology companies of that time. The charter members of P2P United are: Free Peers, Inc., developers of Bearshare; Grokster, LTD.; Lime Wire LLC, developers of Limewire; MetaMachine, Inc., developers of eDonkey; Piolet Networks, S.L., developers of Blubster; and StreamCast Networks, Inc., developer of Morpheus.

The fact that our collective intentions have come under scrutiny in the PTO Report is troublesome and unjust. One of the primary goals of P2P United was to ensure that the rhetoric and misinformation being presented to Congress, the media and the public by the entertainment industry and their trade and lobbyist organizations was balanced with actual facts. The PTO Report also fails to recognize the near year-long effort in 2004-5 made by the members of P2P United, including StreamCast, to work closely with Elizabeth Delany of the FTC on establishing adequate consumer disclosures.

Sharman Networks, the owners of Kazaa (also subject of the PTO Report but not a target of this Committee's inquiry) was not invited to join P2P United for a variety of reasons. Amongst these reasons was that Kazaa was and remains located in the South Pacific Island of Vanuatu where it – to this very day – is apparently able to hide and conceal the true identities of its owners. The members of P2P United were also concerned about Sharman's business practices and distribution of 3<sup>rd</sup> party software, commonly referred to as "spyware" and "malware."

Limewire, one of the initial two organizers of P2P United, withdrew from P2P United in November 2003. Piolet Networks' withdrew in 2005 once its CEO, the other initial organizer of the group, resigned from the Company and started another. Grokster ceased operations in early 2005 as part of their out-of-court "settlement" with the plaintiffs in the MGM/Leiber/Grokster litigation. P2P United finally disbanded in August 2005 after both US-based eDonkey's MetaMachine and BearShare's FreePeers were forced out of business.

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BearShare was purchased by iMESH in a transaction that was apparently 'endorsed' by the entertainment industry plaintiffs that sued it in Federal Court in New York. iMESH is a P2P file sharing company based in Israel with offices in New York whose chairman is the former President of Sony Music and leader of the RIAA. It was initially sued by the RIAA member companies in 2004 and made a highly publicized out-of-court settlement with the RIAA members in 2005. We understand that today the iMESH owned BearShare software is marketed under the name BearFlix.

StreamCast, the only remaining operational member of P2P United, did not have the resources to continue funding P2P United on its own. StreamCast, left virtually on its own to fend off the big money that the entertainment industry continues to throw at lawyers and lobbyists in major countries, is running out of resources. Six long years of litigation has been a resource drain on the company. Instead of applying its revenues and other resources to R&D (research and development), job creation and marketing it has had to devote significant resources to the ongoing legal defense against the entertainment industry.

The entertainment industry plaintiffs are accomplishing much of what they set out to do starting in 2001: disrupt operations, force market abandonment, intimidate potential investors with the threat of "tertiary liability" lawsuits, and scare away new business partners<sup>4</sup>— all while conducting a multi-million dollar public misinformation and lobbying campaign against StreamCast and other P2P technology companies.

We also find somewhat troubling that StreamCast and LimeWire appear to be the only two P2P technology companies asked to address the PTO Report and we are also the only two P2P technology companies still in active litigation with the entertainment industry in the US.

Kazaa, the secretive off-shore P2P entity that was mentioned throughout the PTO Report, iMESH, the foreign P2P company and new owners of the BearShare P2P software, US-based Bit Torrent, developers of P2P file sharing technology installed on over 150 million computers today<sup>5</sup>, as well as other companies that utilize P2P and file sharing technology, such as Microsoft (whose P2P type technology can be found in their Windows Live Messenger), AOL (with similar file sharing technology built into their highly popular AIM Instant Messenger), Skype (the massive P2P-based

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<sup>4</sup> In his oral testimony on "The Future of Peer-to-Peer Technology" before the U.S. Senate Committee on Commerce, Science and Transportation, Subcommittee on Competition, Foreign Commerce & Infrastructure, June 23, 2004, Mr. Michael Weiss, CEO StreamCast Networks, Inc., referenced an actual voicemail left on StreamCast's system by the Chief Technology Officer of RealNetworks documenting that multiple companies in the recording industry have literally colluded to "blacklist" StreamCast and other P2P companies for the purpose of preventing us from doing deals with third parties, like Real Networks. While the industry publicly rails against the use of P2P software to distribute copyrighted material, it privately and illegally is working to prevent us from doing deals that would allow for the sale and distribution of vastly more licensed downloadable music.

<sup>5</sup> Surprisingly, the PTO Report does not even mention the BitTorrent P2P technology, its applications and the corporate entity behind it. BitTorrent the most widely used P2P technology in the US today — a technology that sits on over 150 million active computers and according to analysis firm CacheLogic, this single P2P technology accounts for an astounding 35 percent of all the traffic on the Internet -- more than all other peer-to-peer programs combined -- and dwarfs mainstream traffic like Web pages -- and those were figures reported in 2004. Some estimates today puts that traffic from BitTorrent at nearly double the 2004 figures. BitTorrent is open source—meaning that most programmers here and abroad can write programs to access this technology and with no governmental oversight involved.

VoIP service from the original creators of Kazaa), or Joost (a new P2P video service, also from the original creators of Kazaa), for example, were apparently not yet asked to respond to the Committee's concerns even though their software work similarly to Morpheus and Limewire when it comes to potential security risks and vulnerabilities that was the focus of the PTO Report.

All P2P based software share similar basic technological features that the PTO Report has misidentified as being a contributing factor in terrorism, government security, child pornography, and identity theft. It would seem that any meaningful inquiry meant to protect the privacy of individuals and the security of our government would and should include companies whose P2P software are in much greater use or whose ownership is shrouded in off-shore mystery, and therefore, represents a much greater potential security threat, than StreamCast's Morpheus software— even if the other companies paid millions to the entertainment industry in litigation settlements or have entered into content licensing deals with major entertainment companies.

In Morpheus, once a user has downloaded a file, it has no further technical incentive built into the software to make that file available to other clients. In BitTorrent terminology, clients that are downloading are called 'leechers', whereas clients that are actively uploading are called 'seeds'. BitTorrent tries to prevent "leecher" behavior by forcing its clients to perform simultaneous downloads and uploads and using other "tit-for-tat" tricks in the protocol, a practice that the PTO Report would characterize as a "coerced-sharing feature and then some. Yet the PTO Report chastises the five companies, including StreamCast, for the design of our software, which is less invasive or risky than BitTorrent by any measure.

In fact, [www.StopBadware.org](http://www.StopBadware.org) reports on over 430 software and/or websites that they consider as bad software that can negatively impact a user's privacy. Its In-Depth report on over 20 of the worst offenders, Kazaa is listed. However, Morpheus is not among the 433 applications listed as bad software or mentioned as a website that is distributing badware.<sup>6</sup>

## **II. P2P Technology Background- How It Works**

We believe that it would be helpful for the members of the Committee to fully understand the functionality of P2P technology so that you may each draw your own conclusions about the validity of the PTO Report and to have some base reference point to our responses to the Committee's questions. We have attached as Exhibit "1" excerpted portions of a current magazine article titled, "**Closer Look at P2P Technology**," by Kelvyn Taylor, from the July 5, 2007 article in Personal Computer World.<sup>7</sup> We encourage the reader to turn to and read Exhibit "1" before continuing to read the main text of our response so that the reader better understands how P2P technologies function.

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<sup>6</sup> <http://web.archive.org/web/20061216071949/www.stopbadware.org/home/reportsearch?commit=Search+All>

<sup>7</sup> The entire article can be found at <http://www.pcw.co.uk/articles/print/2193584>

### **III. Answers to the Questions submitted to StreamCast by the Committee**

With all due respect, the Committee's inquiry appears to stem from the highly inaccurate PTO Report which contains scores of factual errors concerning Morpheus' current application, its installation process, its technology and the alleged risks to privacy and security that it poses to the public and governmental agencies<sup>8</sup>. It seems unusual that the PTO Report was produced by the PTO without a more detailed gathering and analysis of the facts, and balanced presentation. StreamCast recognizes, however, that this is an opportunity to attempt to correct the enormous misconceptions of unauthorized access to computer files using Morpheus P2P software that the PTO advances and perpetuates in its report. We respond to the questions posed by the Committee by providing accurate information about the many safeguards on data security, including consumer disclosures and software design, which Morpheus provides to users of its software.

***Question # 1: Is Morpheus familiar with the November 2006 report issued by the Patent and Trademark Office? If so, does Morpheus dispute the report findings or methodology? Please provide any information about the report that you believe is relevant to the Committee's understanding of this issue.***

***Answer:*** As per our introductory remarks and other remarks addressing specific questions below, StreamCast disputes the PTO Report findings and does not understand the methodology used to create the report, considering the inaccuracies and apparent one-sided bias of the PTO Report. StreamCast does not have enough time and resources to provide a page-by-page and paragraph-by-paragraph analysis of the PTO Report and the numerous articles and reports referenced in the PTO Report, as would be required to fully answer this first question, given the short time we have to respond to this Committee, and the resources available to us. We will attempt to highlight just a few instances of inaccuracies and unjustness of the PTO Report to provide the Committee with some balance, so the members of the Committee might be better able to form their own conclusions, or undertake further research.

First, until StreamCast was invited by letter, dated June 19, 2007, to provide a written response to the questions raised by the Committee in that letter, no employee of StreamCast had read the PTO Report, and I was only aware of some of the criticisms leveled by others at the contents of the November 2006 PTO Report. I first learned of the PTO Report sometime in April or May 2007 after reading a few comments about it in the media on various internet websites and blogs. The comments by most of the 3<sup>rd</sup> parties were unflattering and challenged and criticized the validity, methodology, and findings of the PTO Report.

StreamCast was never contacted for input by the authors of the PTO Report either prior to the publication during the 'research' phase, the drafting phase, the editing phase, or following the publication of the PTO Report. Quite frankly, when I did download a copy of the PTO Report from the Internet, after reading just the first few pages it became apparent to me that the PTO Report was so inaccurate, outdated, innuendo-filled, biased and littered with misguided analysis, that I believed,

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<sup>8</sup> Even regardless of relative risks compared with other popular means of accessing, searching and communicating using the internet (e.g., Google, MySpace, or AOL)

perhaps naively, that the PTO Report could not possibly be taken seriously by anyone and, therefore, I determined that my time would be better devoted to the myriad other issues I and others at StreamCast needed and need to address on a day-to-day basis and that no one at StreamCast need read any further into the PTO Report. Obviously, I was wrong to assume that no one would take this report seriously. I assumed that readers of the PTO Report had a better understanding of P2P technology, but as is often the case when someone is immersed in an industry I neglected to take into account that those who do not deal with the technology on a day to day basis, as I do, might believe that a report such as that published by the PTO is valid. Now understanding this, I commend the Committee for initiating an inquiry, and only hope that the Committee's inquiry is a complete one. Now that the Committee has undertaken an inquiry, it does not make the PTO Report any more accurate. It makes it more dangerous that public policy might be based on its inaccuracies and clear biases.

Second, we take issue with the motivation behind producing the PTO Report and any pre-determined biases that might exist by the authors of this Report.<sup>9</sup>

The PTO Report appears on its surface to purposely include only selected research designed to advance unproven theories targeting a handful of companies. One would expect more from a government document purported to be examining consumer privacy and government security concerns, especially an agency as highly respected as the PTO. The exclusion of other well publicized independent research reports, articles and analysis that presented pro-file-sharing and pro-technology viewpoints is missing from the PTO Report. This has the immediate effect of calling into question the methodology used and the findings of the PTO Report itself; although we hope that this was more of an oversight than a deliberate act of exclusion.

In the "Forward" of the PTO Report, Jon W. Dudas, the Director of the USPTO, expressed the following:

*"They (P2P File-Sharing software) also pose a real and documented threat to the security of personal, corporate, and governmental data."*

We take issue with this statement and have a more detailed answer to this as part of our response to Question # 9 from the Committee. However, an extensive FTC report released in 2005 concluded that there is no evidence that that using P2P file-sharing programs provide any more risk than surfing websites, downloading software, or using e-mail or instant messaging.

Mr. Dudas, on page ii of the "Forward," also asked the following:

*"What are the best options for owners of home computers who want to avoid the security and liability risks associated with filesharing programs?"*

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<sup>9</sup> As noted by the Electronic Frontier Foundation (EFF) on its website [<http://www.eff.org/deeplinks/archives/005180.php>]: "...the authors include Tom Sydnor, who while an aide to Sen. Orrin Hatch was widely credited with the Senator's infamous "blow up their computers" solution to P2P file-sharing, and Lee Hollaar, a professor who was a motivating force behind the ill-fated INDUCE Act. So it's fair to say these gentlemen have an anti-P2P agenda and a rather one-sided view of copyright law."

While the answer here is obvious to us, we believe that it needs to be stated one more time. Morpheus has never been bundled with users' computers or any software programs that come pre-loaded on new computers. Morpheus does not magically appear on an owner's home computer. A user must go to a website and proactively download and install the software on their home computer. They are taken through a series of install screens (see Morpheus Consumer Disclosures) that must be completed before the software is downloaded on their computer. Computer users are provided multiple warnings about potential dangers of sharing private information inadvertently, downloading, making available for uploading works of authorship that copyright holders might not have been authorized for sharing, and the risks of children being exposed to material that might be inappropriate material for children, and are given opportunities to quit the install process if they wish.

Also, the "shared folder" that gets installed on a new users computer is empty. The computer user has to populate their shared folder with files. Morpheus provides additional warnings if a user inadvertently attempts to share their entire drive (be it C:/, D:/, E:/, F:/ or others). To sum up this answer, all a user needs to do to prevent any potential risks associated with file-sharing programs (and Morpheus in particular) is to just say **NO!** Even with technical development or numerous warnings and disclosures nothing can replace common sense or proper parental supervision, or the supervision or policy restrictions and guidelines to be imposed on governmental officials and employees, and employees of any business entity. Certainly many business entities prohibit employees from downloading, installing and using certain types of software, including P2P software.

Page 1 in the 'Executive Summary' of the PTO Report states:

*This report concludes that the distributors of these five filesharing programs have repeatedly deployed features that had a known propensity to trick users into uploading infringing files inadvertently.*

As documented herein, StreamCast has not deployed features to 'trick,' "dupe," "misinform," fail to inform," its users into uploading infringing files inadvertently and strongly disagrees with these allegations.

Page 3 of the PTO Report states:

*"...For example, the distributors of BearShare, eDonkey, LimeWire and Morpheus began or continued to deploy poorly disclosed redistribution features, share-folder features, search-wizard features and/or coerced-sharing features even after these distributors drafted a Code of Conduct that should have precluded use of any such features. Some distributors even responded to reports of inadvertent sharing by releasing new versions of their programs that seemed improved, but actually perpetuated inadvertent sharing caused by features previously deployed. Consequently, this report concludes that the totality of the circumstances surrounding the deployment of such features justify further investigation to determine whether particular distributors intended for such features to act as duping schemes"*

As documented herein, StreamCast has not deployed any features contrary to P2P United's Code of Conduct and never released 'new versions that seemed improved but actually perpetrated inadvertent

*sharing.*” These allegations are untrue and leads us to reiterate our contention that the PTO Report may have been purposely written in such a way as to confuse even the most technologically savvy readers by intertwining the software functionality of all five P2P file-sharing programs with one another and moving back and forth between newer and older versions of all five software programs (but not current versions) in such a way that makes it nearly impossible to define a particular software’s behavior on its own. The PTO Report is skillfully written so that the reader assumes that all the file sharing programs examined each covertly incorporated features that the authors found to be negative.

Elsewhere in our response to the Committee’s questions, we attempt to address the continual misinformation theme of “duping” that the PTO Report is insistent in trying to perpetrate. We state here, unequivocally, that StreamCast is not and was not perpetrating any scheme on its users to ‘trick,’ “dupe,” “misinform,” or “fail to inform” users. There is absolutely nothing to substantiate these allegations levied against us by the PTO Report. The same holds true for the theory of “aiding-and-abetting” that surfaces on page 4 of the PTO Report.

Page 5 & 6 of the PTO Report claims:

*“Upon remand, the district court in Grokster found undisputed evidence showed that almost 97% of the files actually requested for downloading were infringing or highly likely to be infringing.”*

StreamCast disputes this. Because the District Court judgment on a motion for summary judgment is not final, and has not yet been appealed, StreamCast must decline to discuss this in any detail, however, it should be noted that any factual findings by the District Court such as this one, is subject to appeal as being erroneous. Further, it is worth noting that following remand, the District Court stated that it believed that its earlier rulings in StreamCast’s favor on vicarious and contributory copyright infringement claims were left undisturbed by the Supreme Court and that it was only applying the newly enunciated active inducement standard. The District Court reiterated its finding that Morpheus is capable of and is used for substantial non-infringing purposes.

Page 6 of the PTO Report erroneously states:

*This situation also seems to deter information markets: For example, because virtually everyone who uses a popular filesharing program appears to use it almost exclusively to download infringing files, a magazine or website seeking to do a meaningful review of filesharing programs would have to assess their relative efficacy as a means of copyright piracy. Perhaps for this reason, filesharing programs have become one of the most widely used, yet least discussed and reviewed, computer programs on the market.*

There are several problems with this. First, there is no unbiased empirical evidence (as opposed to rhetorical beliefs) that “virtually everyone who uses popular file-sharing programs use it almost exclusively to download infringing files.” As one example, even though it has not been ordered to do so, in an act of good faith and in an attempt to demonstrate to the entertainment industry that it should make content available for licensing through Morpheus, Morpheus voluntarily invented and

implemented in November 2006 a methodology<sup>10</sup> to filter or block media files from being able to be downloaded by users if such files appear to be major label, studio or television network works not authorized by the copyrights holders for free file-sharing distribution. It is nearly impossible to use Morpheus to download what would or might be such infringing files today. There are approximately 4 million users of Morpheus today that continue to use the software even though StreamCast has deployed its filtering technology. The assertion, therefore, that ‘virtually everyone exclusively downloading infringing files’ is patently false.

Further, there is no factual basis to state that “*filesharing programs have become one of the most widely used, yet least discussed and reviewed, computer programs on the market.*” A simple search using just one search engine, Google, for the term “file-sharing” instantly returns over 3.6 million results, the term “Morpheus” returns over 6.7 million results, “Limewire” returns 12.9 million results and BitTorrent returns 41.9 million results. There are several websites and blogs that are devoted to 100% coverage of file-sharing software. The claims in the PTO Report that file-sharing programs are the “least discussed and reviewed computer programs on the market” are simply not credible and certainly should not be dismissed as an inadvertent oversight with the excuse that the researchers and authors of the PTO Report simply did not know where to look. This glaringly incorrect statement, in conjunction with all the other inaccuracies and falsehoods stated in this report, should support calling into question the accuracy of the entire PTO Report by any reasonable reader.

Page 8 of the PTO Report states:

*“Distributors of filesharing programs created an unprecedented, avoidable, and tragic conflict between artists and their fans.”*

It is difficult to address such a broad and unsupported (by unbiased data and studies) statement as the above. Debates about issues involving purported declines in revenue for record labels and artists have raged, and there is no clear and certain single conclusion as to whether, in fact, there are tragic conflicts between artists and their fans, or what the cause or causes may be, assuming, *arguendo*, that the premise is valid. We are unfamiliar with any conflict between recording artists and their fans created by file-sharing software. Just the contrary, many top and upcoming recording artists will unequivocally state that file-sharing is and was a boon to them and made them more accessible to their fan base, and have indicated that they will continue to embrace the sharing of their pre-recorded musical performances.

Many promotion executives at the major record labels admit to planting early release versions of new songs on P2P Networks to build artist buzz. Indeed, many artists claim that it is the record labels themselves that try to put a wedge between them and their fans. It was not too many years ago that the recording artist formerly known as and once again known as Prince, “tattooed” the word “Slave” across his forehead whenever he performed in public in reference to the recording contract he had with his record label.

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<sup>10</sup> Not a term of Art for purposes of any intended patent application(s).

Veteran recording artist Todd Rundgren, known for such 1970s pop hits as "Hello It's Me," and legendary in the industry for his wizardry as a producer, music video pioneer and explorer of computer technologies, wrote in an editorial in The Hollywood Reporter Magazine that stated, in part:

*"...Ask also whether, as a musician, you ever believed the RIAA was actively protecting your interests until they got into a fight with their own customers and started using your name, your so-called well-being, as justification. And when the customers became skeptical they became the enemy. And to follow the RIAA's logic, customers are therefore the enemies of musicians. Let us ignore the fact that if you ever got compensated for your contribution, it would have been because your manager and lawyer (and many before) forced the labels to recognize your labor in financial terms.*

*The reason why the RIAA comes off as a gang of ignorant thugs is because, well, how do I put this -- they are. Now we have four monolithic (in every sense of the word) entities and a front organization that crows about the fact that they have solved their problems by leaning on a 12-year-old.*

*The RIAA protects musicians like the musicians union protects musicians: They reward hacks and penalize those outside the system. The labels are not making this stink out of principle. They are not interested in the rights of musicians who don't sell any records for them. That myth was exploded when Warner's dropped Van Morrison for "lackluster sales."*

*This stink is about a bunch of dumb asses blaming the public for doing what the labels could have -- and should have -- done 10 years ago. I know because I told them so, each and every one individually and relentlessly: Put the music on a server so you can deliver on-demand services to people's homes. Seems so stupidly simple now.*

*After nearly 40 years in this business I know who my friends are. I know it isn't the labels who lost interest in my "fringe audience" decades ago. It is that fringe audience who still await any recording or performance I may come up with despite the RIAA trying to drive some symbolic wedge between me and my listeners just because their ass is in a sling. Don't do me any favors.*

*It's time to let the monolith of commoditized music collapse like the Berlin Wall. Musicians can make records if they feel like it, or not. Wide open pipes are ready to transport us, mainstream and fringe alike, into the ears of an eager audience who appreciates us and is more than willing to financially support us. Get out of the way if you can't lend a hand because ... you know the rest by heart.*

Ask any record company executive to define the meaning of a long time practice known as "The Plantation System" and you will easily conclude that the record labels need no help from P2P technology companies to create conflicts between them and their artists or fans. Entire books have been and can be written on this subject. This is not the place for StreamCast to attempt to address this issue, but StreamCast could not simply let such a bold unsupported assertion go without pointing out that this is one of many unsupported and hotly contested issues raised in the PTO Report.

Page 9 of the PTO Report states that it seeks to answer two questions:

*First, have distributors of these filesharing programs deployed features that had a known or obvious propensity to trick users into uploading infringing files inadvertently?*

*Second, if so, do the circumstances surrounding the deployment of such features suggest the need for further investigation to determine whether any particular distributor intended for such features to act as duping schemes—as “technological features to induce users to share.”*

The answers to these two questions are a resounding NO! Our response as to why are further covered in our responses to some of the other questions asked by the Committee herein.

Unfortunately, there is simply not enough time to respond to all the inaccuracies of the PTO Report given the deadline we have and the limited resources of our company. We find substantial factual problems with almost every instance of the PTO Report, and we have not even had the opportunity to review the numerous articles, studies and reports cited in the PTO Report. Just the few instances that we have touched upon herein should be sufficient to question the validity of the entire PTO Report and it is hoped that our response convinces the members of the Committee that the PTO Report’s conclusions should be called into question. We believe that the response of Limewire will also raise questions, and if Kazaa, iMesh and BitTorrent were asked to respond to the PTO Report as concerns their software that their responses would raise further questions in the minds of the members of the Committee as to the validity of the PTO Report for many reasons.

However, before going on to the next question, we would like to highlight a few additional egregious fabrications in the PTO Report are indicative of the biasness evident in the PTO Report:

Page 14 of the PTO Report demonstrates that the PTO Report is not based on facts, but also attempts to resort to rhetoric, hypothetical’s or pure fiction to attempt to enhance their case against P2P file-sharing technology companies, as demonstrated in these passages that discusses aliens creating a fictional supercomputer called “Deep Thought” and the (somewhat convoluted) connection with the Limewire software:

*Information can be disclosed in ways that make it too ambiguous to be useful. For example, in THE HITCHHIKER’S GUIDE TO THE GALAXY, aliens create a supercomputer called Deep Thought to calculate the meaning of life, the universe, and everything. After calculating for ages, Deep Thought discloses that the answer to the meaning of life, the universe and everything is “42.” Just “42.” This disclosure does not really illuminate the meaning of life. Given that this best-of-class display could have easily become even more useful and informative, one might wonder whether it has changed over time. It has. In early 2006, this display looked like this:*



Figure 3: LimeWire 4.10.9

*“42.” Just “42.” In other words, this user is sharing 42 files. LimeWire’s once-useful display became a real-world implementation of Deep Thought.*

StreamCast addresses Morpheus’ exemplary disclosures to users on how many and what type of files are being shared by them in our response to Question 3 that follows, since the PTO Report excludes these screen capture shots for whatever reason.

Jumping to Page 30 of the PTO Report, we see that the PTO Report not only resorts once again to the use of rhetoric and hypothetical’s in an attempt to misinform, but this time the PTO Report actually altered or planted the names of folders within the Morpheus application that do not exist:

*“The following screenshot shows the result of a default installation of an early-2005 version of Morpheus:”*

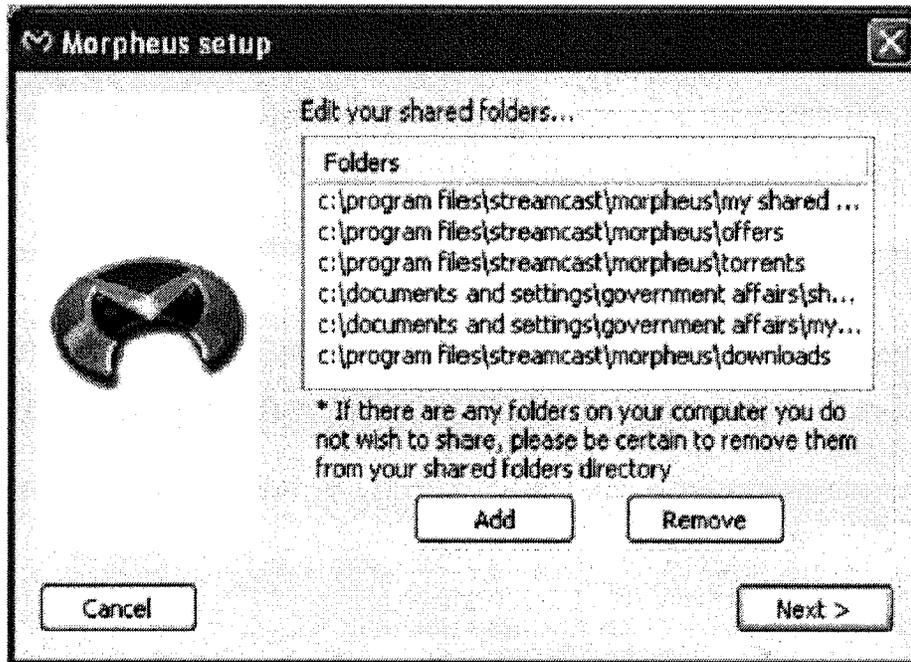


Figure 13: Morpheus 4.7.1.326

*This screenshot shows Morpheus sharing six folders automatically. Four of these folders appear to be specially created by the Morpheus program. Two of these folders appear to be existing folders, and one appears to be “My Documents”—though this version, like others, truncates folder pathnames in a way that makes it difficult to be sure which folder is being shared.*

*The 4 and 5-series versions of Morpheus install in a way that prevents the replication of the experiment that produced this screenshot. Consequently, it is possible that this version of Morpheus actually contained a different “feature” that can produce effects akin to those of a fully automatic search-wizard feature. The following hypothetical illustrates the potential*

*consequences of this "feature" in a multiple-user environment like a private home or a college dormitory.*

*Suppose that a man who owns an Internet-connected home computer hosts a party for his relatives. During the party, a bored 13-year-old nephew leaves the gathering and installs BearShare onto his uncle's computer to download some files...*

We have very serious problems with the above screen capture shot of Morpheus (page 30, figure 13 of the PTO Report) and so should the Committee members. This is pure fabrication. No version of Morpheus, past or present, ever installed any folders named "Government Affairs" within Morpheus. For the purposes of the PTO Report, the authors apparently had to create two folders named "Government Affairs" and then had to proactively and consciously decide to move those folders into Morpheus for sharing or had shared it previously and then reinstalled Morpheus which would remember a users settings upon updating. A clean installation of Morpheus would not have produced these results. Furthermore, the authors then state, "*The 4 and 5-series versions of Morpheus install in a way that prevents the replication of the experiment that produced this screenshot,*" to somehow imply that StreamCast has something to hide. Of course this screenshot can not ever be reproduced because it never existed in the first place without someone manipulating it. There is something seriously wrong for authors of a government report to "plant" misleading information in the form of phony screen capture shots or doctored software just to attempt to prove their point.

Then, to make matters worse, the PTO Report falls back on yet another "hypothetical" illustration because they could not find a real one that could make their case against P2P file-sharing technology:

*The following hypothetical illustrates the potential consequences of this "feature".*

**Question # 2: Does Morpheus currently adhere to the above-referenced Code of Conduct?**

Answer: Morpheus followed to the P2PUnited Code of Conduct once propagated and after P2PUnited disbanded in August of 2005 and continued to follow the Code until we recently replaced it with our own Consumer Disclosure Guide, an enhanced modification based on the initial P2P United's code, which we currently adhere to.

**a. If so, when did Morpheus adopt the Code?**

The original Code of Conduct was adopted and publicly announced in November 2003.

**b.If not, did Morpheus ever keep to the Code after it was announced? If so, when did it do so, when (for which version numbers) did it stop, and why?**

Currently, Morpheus follows its own Consumer Disclosure Guide, a set of more stringent consumer disclosures, which is essentially based on ideology and doctrine of the original P2PUnited Code of Conduct.

*c. Is the current version of Morpheus the most compliant with the Code of Conduct of any version so far? If not, why not?*

Yes. The current version of Morpheus continues to rigorously hold fast onto clearly and conspicuously written consumer disclosures in order to minimize the risks to users of their inadvertent sharing of files, and includes prominent links to the FTC's online brochure for more information about the risks associated with file-sharing software, as well as links warning against and informing what is copyright infringement.

In the spirit of P2PUnited, StreamCast continues its desire to act responsibly, to improve its products, and to offer consumers a high-quality experience. We encourage this Committee to ask ALL P2P software developers to improve on disclosures of risk information to consumers as Morpheus continues to do. We believe that it would be beneficial to everyone for P2P distributors to make this information more accessible.

**Question # 3: Does Morpheus provide users with information to avoid uploading files inadvertently?**

Answer: Morpheus outlines and illustrates both clearly and concisely, in its Morpheus Consumer Disclosure Guide, how Morpheus operates in providing consumer disclosures to make readily available to users of the software information regarding installation, configuration, privacy, data security, confidentiality, and sharing of inappropriate file content.

This document, published at <http://www.morpheus.com/MorpheusConsumerDisclosure/> contains illustrations ("screen shots") captured directly from the Morpheus software and the morpheus.com website, along with reprints of the text included in each figure (either in its entirety or excerpted, as relevant).

The Guide gives users information, broken down into three major categories, on "Installation & Configuration," "Compliance with Applicable Law" and "Privacy, Security, Confidential."

**a. Please describe how Morpheus helps users avoid inadvertent sharing. Include examples or screen shots from your program and website if appropriate.**

To prevent inadvertent file-sharing of personal files including personal and sensitive document files such as tax returns or work-related files that shouldn't be made available or files that would compromise individual privacy or national security, this feature is included as part of the install process.

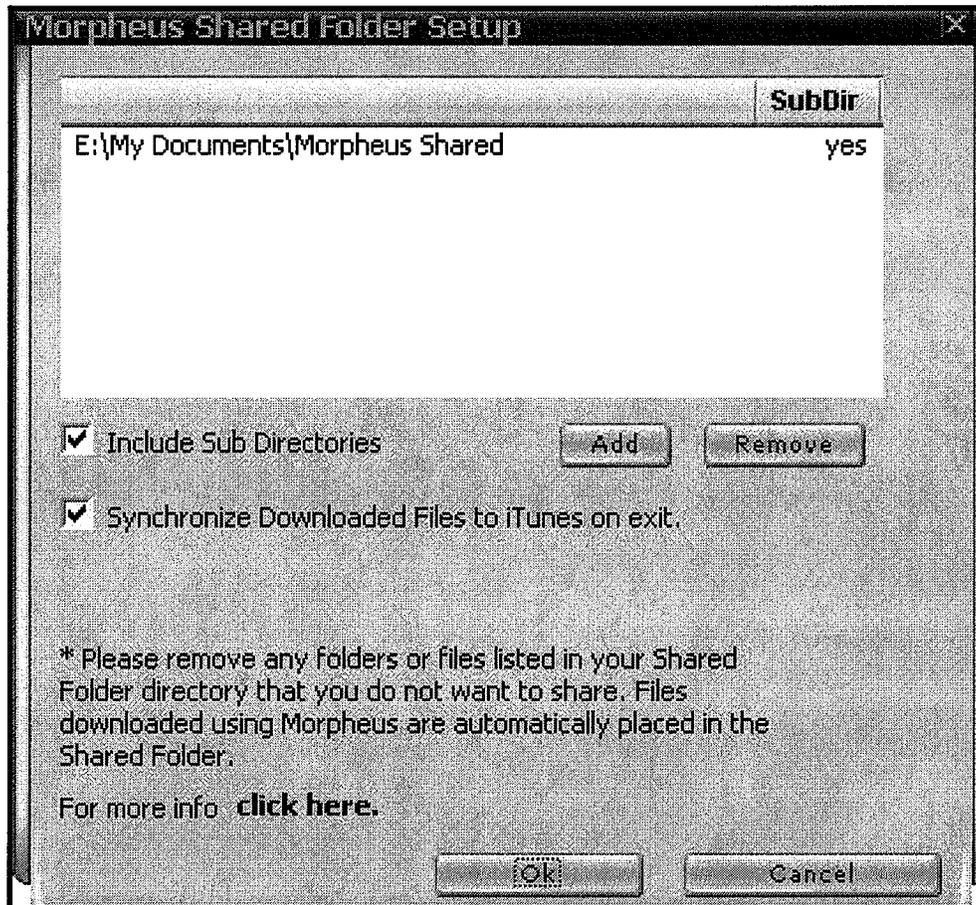


Figure A-1

During the Morpheus install process, users are prompted to Edit the Directory and Subdirectory where shared folders are located. Folders and files can be manipulated during the install process. Users are given clear and conspicuous options to Setup to Add or Remove files and folders they wish to share.

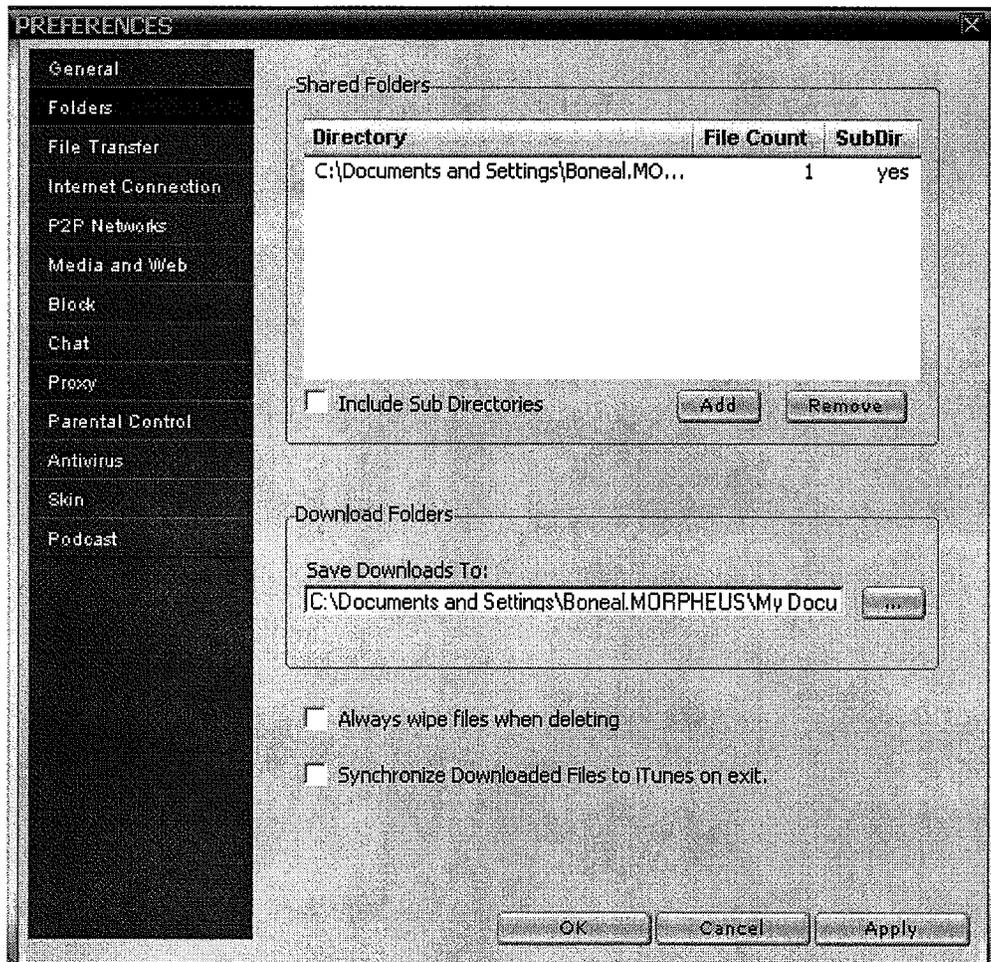


Figure A-2

**Figure A-2**  
The Shared Folders Directory, accessible after a user has installed the application by clicking the Preferences tab, allows users to edit or specify which folders they want to share.



Figure A-3

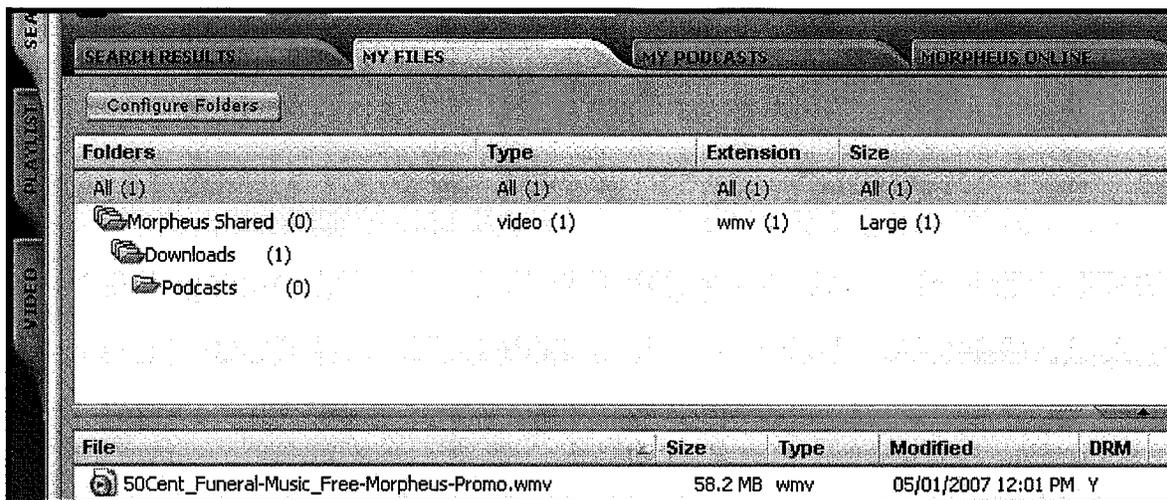


Figure A-4

**Figures A-3 and A-4**

While the Morpheus application is running and not minimized, users have a constant clear and visible display of exactly how many files they are sharing, which folders they are sharing, and options to easily configure those folders and files. This best-of-breed display also shows users how many downloads and uploads are in place; which networks a users is connected to; and whether or not a user's security firewall is active.

This main screen clearly displays to users how many files they are sharing and the type, size, and extensions of those files as well as which folders are being shared. Users can easily configure their shared folders from this main interface.

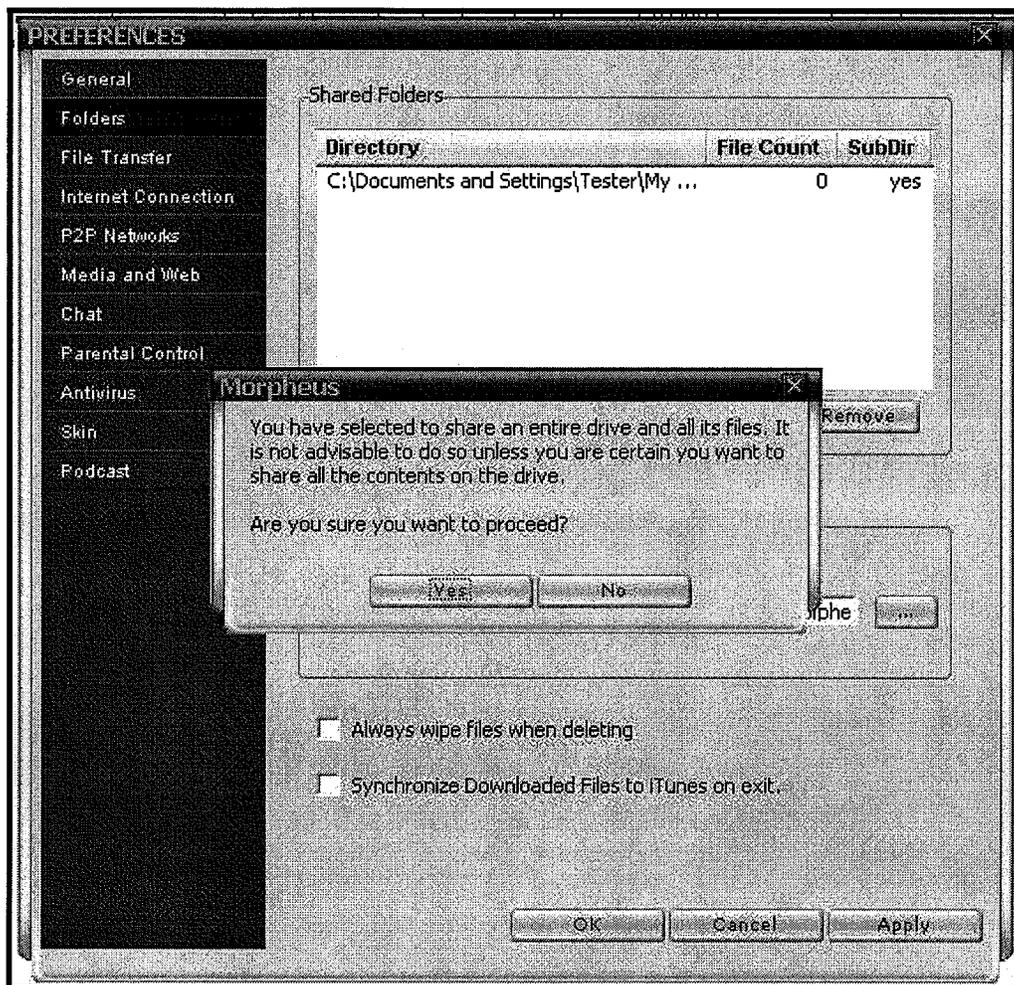


Figure A-5

**Figure A-5**

Users are given a clear and concise warning if they attempt to share an entire drive. To further prevent the risk of sharing their Windows files inadvertently, the sharing of a user's entire Microsoft Windows folder is not allowed.

**Is the current version of Morpheus the least likely to allow users to inadvertently share files of any version so far? If not, why not?**

Yes. StreamCast is an industry leader in establishing and complying with its consumer disclosures. The most recent version of Morpheus includes more information and warnings than any previous version and therefore StreamCast is taking the necessary steps to give its users adequate information on the risks of eliminating inadvertent sharing as well as using P2P software safely and responsibly.

**Question # 4: Does Morpheus utilize a default “redistribution feature” that causes users of the program to upload all files that they download?**

Answer: It is not accurate, as the PTO Report misleads, to say Morpheus deploys a feature that causes users of the program to upload (or “share”) all files that they download.

If the user does not want to share downloaded files, the user may move the files out of the download folder once file downloads have completed. The user is clearly and concisely informed of this during the installation process and is given options not to share files once file downloads have completed.

When a file download is in progress, it’s considered as a partial file and those parts already downloaded and in the process of being downloaded will be shared with other users. Partial files are shared. This is a standard feature of P2P software and a technological advantage of file-sharing applications; this is a feature of the technology which is no different than BitTorrent technology.<sup>11</sup> And many other file sharing applications not subject to the PTO Report.

Within the Morpheus Shared folder is a “Downloads” sub-folder. This is the default folder created during the install process. The user is informed of this with various screen shots during the install process and is given options to edit these folders and their location. This folder is used to store files downloaded by users using Morpheus. The user can at any time change the location of the download folder—however, peer-to-peer software is generally designed for the user to share the files placed in their download folder, ergo the classification calling it “file-sharing” software.

**Question # 5: Does the Morpheus program employ a “recursive sharing” feature (i.e., the program shares not only the file stored in the folder selected to store downloaded files, but also all files stored in any of its sub-folders)?**

Answer: Upon installation, users are given clear and concise options to share a folder without sharing its subfolders. Users can easily and readily edit this option at any time. The “Morpheus Shared” folder and its subfolder “Downloads Folder” are shared by default after Morpheus is installed for the first time. The default shared folder, “Morpheus Shared,” is a sub-folder within a user’s “My Documents” folder. No files are present in the “Morpheus Shared” folder upon the install of Morpheus. The user must proactively add files they wish to share to this folder. Files downloaded from the P2P network are downloaded and saved to the “Downloads Folder” and become available to share by others unless those files are removed from the “Downloads Folder” by the user. Morpheus, in

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<sup>11</sup> See Kelvyn Taylor, “Closer Look at P2P Technology,” Personal Computer World (July 5, 2007), <http://www.pcw.co.uk/articles/print/2193584>

addition, places a clear and visible Windows desktop shortcut on users' computer that takes them directly to the "Downloads Folder" for easy access. This is a standard technological feature of most file sharing software.

Morpheus has added additional consumer advisories and disclosures to this screen during its install process that we believe will further clarify the awareness of users of what they share.

***Question # 6: Does the Morpheus program utilize "partial uninstall" features? How can users completely uninstall the Morpheus program without leaving behind files that might affect subsequently installed versions of the program?***

***Answer:*** Morpheus does not use or deploy a partial-uninstall feature as per the common meaning of the term. If a Morpheus user wishes to uninstall the program from the user's computer, the process is easy, fast, complete, and does not leave behind any aspects of Morpheus or any files or folders that will cause any subsequent intentional installation of any version of the Morpheus program to share all folders or files shared by the "uninstalled" copy of the program. Further, there is no "silent" or automatic reinstallation of Morpheus. If a computer is used by more than one person, Morpheus includes a default feature that ensures users can remove or add any files or folders they wish to share.

Uninstalling Morpheus will remove all traces of the application upon reboot. Only user downloaded files will be left behind. Morpheus can easily and completely be uninstalled via the Windows Control Panel or by using the uninstaller application provided during the install.

If a user is upgrading or re-installing Morpheus, only previously shared folders that the user has populated will be shared, however, the user is given an option immediately after the install process to modify the shared folder list and either add or delete whichever folders and files they wish to share or not. The PTO Report incorrectly labels this functionality a "Partial Uninstall Feature." Actually, Morpheus gives users additional options to add or delete files at any time they wish, not just after a re-install. It is expected that users are given the option to save settings in any application. StreamCast will, however, make it even more clearly to users who reinstall Morpheus that previously shared folders that the user has populated will be shared.

***Question # 7: Has Morpheus deployed "coerced sharing" features (i.e., the program provides inaccurate or misleading information about what folders the user may be sharing)?***

***Answer:*** No. Morpheus makes it easy for users to remove files stored in the "Download Folder." The "Download Folder" is shared by default, but the program easily allows users to remove any of these files via a clear and concise dialogue box. In other words, Morpheus gives users the ability to move files, once they've been downloaded, to a folder anywhere on their computer where such files are not shared, unless the user intentionally and knowingly makes such folder(s) and its/their contents available for sharing. Morpheus' "My Files" tab clearly lists all folders and files which are being shared and Morpheus' persistent status bar lists the total number of files being shared.

There is nothing misleading about this, as the PTO Report attempts to describe. If a user wishes to share files, there is nothing inadvertent about it.

Morpheus software has evolved and improved over the years, but in reviewing versions that go back four years to version 3.0, there has been at least one constant in the Morpheus software -- it has posted very clearly in the status bar the number of files shared and had a tab that displayed all shared files clearly named 'Library', 'My Files' or similar labels. The PTO Report cites features in old versions of Morpheus unfairly. Actually, Morpheus has become more aggressive in providing its users with clear and reasonable warnings about the risks of inadvertent sharing. [Note: the current management and development team at StreamCast was active from May 2003 to present and developed and distributed Morpheus Versions 3.2 to today's current 5.4]

These features in file-sharing software are not nearly as dangerous as the PTO Report would have Congress believe. Morpheus does not "cause" users to share inadvertently. Users are given warnings and may only share sensitive personal files like tax returns, health records, financial records, or documents containing private or even classified data, if the user intentionally decides and knowingly opts to do so, on an opt-in basis.

There is nothing implicitly wrong or illegal with sharing documents, images or audio files, as long as these files are intended for distribution and authorized by rights holders for distribution. Doctors, librarians, scholars, and many musicians intend for their files to be shared and searched for efficiently with file-sharing software, such as Morpheus.

Morpheus software users are not allowed to share the "c:\windows" folder or any sub-folder within it -- this important fact was omitted in the PTO Report. The user will not receive an error when trying to share such folders—however, the shared folder will disappear from the shared folder list when the user clicks on the "Apply" button or exits the list. This leaves no room for user-error to inadvertently share private files that a user stores on their personal computer.

As a convenience to users to provide as automated and simple process as possible through software design, by default, the option box to share sub-folders is checked. The user is allowed to uncheck this option when adding a folder to the shared folder list or when browsing their computer to share a folder.

During a program's activation, installation-and-setup process or anytime when the program is running, users are given the option to select identified folders for sharing. Morpheus does not select or identify personal or private folders for sharing.

***Question # 8: In your estimation, would the removal from Morpheus (or from the Gnutella P2P protocol) of any or all of the features referenced in questions 4 through 7 risk the collapse of the Gnutella P2P Network, as some scientific articles have suggested?***

***Answer:*** It is difficult to respond to such a hypothetical question as this. First, Gnutella is an open source protocol. Any experienced developer, whether sitting in a garage in San Jose, a dorm room in Boston or part of a think tank in Estonia, can create a Gnutella-based P2P file sharing application. In fact there are numerous Gnutella-based P2P applications available to users including those P2P

applications considered to be part of the “DarkNet”.<sup>12</sup> Unfortunately, most of these companies / technologists are out of reach of US oversight.

As we understand it the US Entertainment Industry itself has spent a considerable amount of resources in unsuccessfully trying to corrupt the Gnutella P2P Network or to flood it with spoofs, bogus and fake files as to not make using the Gnutella Network unusable. This is unfortunate since in *Grokster*, Judge Wilson found that StreamCast’s Morpheus P2P technology is capable of and is being used for substantial non-infringing uses – a decision that he noted was not affected by the decision of the Supreme Court of the United States. However the US Entertainment Industry has attempted to deprive American citizens from these uses in their attempt to “throw the baby out with the bath water.”

In short, though, StreamCast believes that even making it impossible to users to actively move files into their share or download folders, or automatically removing downloaded files from the share or download folders, even while those files are in the process of downloading or are partial downloads, would not have a major impact on the Gnutella Network so as to cause its collapse because our size and impact on the Gnutella Network is relatively small compared to others. For example, it is widely speculated that LimeWire has over 50 million active users accessing Gnutella whereas Morpheus has approximately 4 million users. Even iMESH, the Israeli company that has secured entertainment industry distribution licenses, uses the Gnutella Network. It is unknown how many other users access the Gnutella Network from the myriad other Gnutella-based clients that have flooded the market but are not publicized. Furthermore, since Morpheus began voluntarily filtering unauthorized media files in November 2006, its filtering has blocked access to sharing using the Gnutella Network by its users.

Morpheus does not deploy a partial-uninstall feature as per Question # 6 nor does it deploy “coerced-sharing” as outlined in Question 7, therefore those questions are not applicable to the scenario presented in this Question # 8. That leaves the functionality in Questions 4 & 5, “redistribution” and “recursive-sharing” respectively.

In essence, Yes. As detailed in our response to Questions 4 & 5, this is the way nearly all P2P file-sharing technology functions. If we removed these features, as suggested in the PTO Report, then the software would no longer function as “file-sharing” software – a more appropriate name would be “no-sharing” software. We do not state this to be factious or humorous because it does call to mind the attempts by the MPAA, under the leadership of the deservedly respected Jack Valenti, in the 1970’s to force Sony Corporation to remove the “record” button from their Betamax video recorders or face massive litigation. The MPAA stated that having a ‘record’ button in a VCR induced users to violate copyright laws. As it turns out, the movie industry is very thankful that the Supreme Court thought otherwise.

Jack Valenti’s famous speech that ***“Home video is to the movie industry what the Boston Strangler is to a woman home alone,”*** invoking murderous tales of the 1960’s to make his point to Congressional leaders in attempting to change existing laws to benefit the movie studios, also rings hollow in the face of history but finds similarities to the present situation of the entertainment industry trying to remove the parallel “record button” from P2P file-sharing technology.

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<sup>12</sup> JD Lasica, *Darknet: Hollywood's War Against the Digital Generation* (Wiley & Sons, May 2005)

Just as history has proven the entertainment industry to be wrong about new technologies destroying their business – going back to the player piano rolls of the 1800's to FM radio in the 1940's to television in the 1950's to cable TV in the 1960's, to VCRs in the 1970's, video rentals in the 1980's, MP3 players in the 1990's – we are confident that history will also prove the entertainment industry wrong in the 21st Century in their battle to destroy or stifle P2P file sharing software.

Yes, the Internet and Internet-based technologies will forever change the way media is distributed to and consumed by the public, but laws should not be tailored to attempt to prevent the inevitable. Yes, jobs will be lost, video stores will be closed, but these will be replaced by new opportunities and more efficient distribution resulting in greater corporate profits in the long run. Buggy whip manufacturers and blacksmiths also went out of business. It is always rocky when you are in the midst of a sea-change, as we are today.

The removal of the features that make Morpheus an efficient means for digital distribution would have only one effect: it would kill the utility of the Morpheus client. This would provide a decisive monopolistic advantage to non US-based P2P technology companies and would create an un-level playing field for competition. Also, other Gnutella clients would simply block the US-based P2P clients from having any access to the Gnutella Network whatsoever. Users would not just stop using the Gnutella Network, they would simply stop using the US built P2P technology in favor of off-shore or open source P2P software – or even result to using the “DarkNet.”

A key concept and advantage of peer-to-peer is that participating clients contribute resources in distributing bandwidth, storage space, or computing power. As an example, as the demand for data or content goes up, the peer-to-peer system gracefully handles this demand with peers participating in sharing back to distribute resources demands including bandwidth. In contrast, a traditional central server to client architecture is not able to distribute the increased demand, thus having a clear disadvantage to peer-to-peer systems in reliability, efficiency, and robustness. By removing the ‘redistribution feature,’ this key technological advantage is eliminated. Redistribution is common in all if not most peer-to-peer technology methods whether exchanging data containing video or telephony traffic or any data in digital format on either public or private peering networks.

It is rather obvious that if there were to be no sharing of files being downloaded from the P2P Networks then there would be nothing to search for and nothing for the peer-to-peer to leverage its technological advantages toward distributed indexing, searching, organizing, data transferring and downloading.

**Question # 9: Does Morpheus agree with the assertion that certain P2P software programs pose risks to government and private users?**

- a. *If not, why not?*
- b. *If so, does Morpheus have any recommendations regarding how these concerns can be addressed and resolved?*
- c. *Is Morpheus planning to deploy software upgrades to address these concerns?*

Answer: No. The Internet, used by people everywhere to easily share files and information, poses more risks to the government and private users than P2P software. An extensive FTC report released in 2005 concluded that there is no evidence that that using P2P file-sharing programs provide any more risk than surfing websites, downloading software, or using e-mail or instant messaging, perhaps even less-so.

Social Networking sites, such as MySpace, YouTube and Facebook, provide far more dangers for pedophiles to make easy contact and arrange for in-person meetings with unsuspecting youngsters and teens. There have been documented encounters of users on social networking sites, instant messaging, chat-rooms and email that have resulted in murder, abductions or rape whereas none of these crimes have been attributed to the use of P2P file-sharing software – except in the hypothetical scenarios posed by the PTO Report.

There has been no documented evidence to our knowledge that terrorists have used P2P file-sharing networks to further their crimes against our Country. Indeed, they are more apt to use “DarkNets” and proxy servers<sup>13</sup> - some are anonymous proxies, which are used to hide users’ real IP address and thus hide their covert operations.

ISP filtering<sup>14</sup> could be deployed on a much more efficient and complete manner to detect whether someone is attempting to upload or download a file that is not authorized for such distribution by the copyright holders.

Lastly, there is real risk to the ability for the United States to maintain any sort of leadership position and technological innovation if laws or regulations are passed that will severely restrict technological innovation by American companies on American soil. Certainly the loss of American dominance and reduced influence in technology is a far greater threat to this country, its citizens and its private industry, than American-based P2P software such as Morpheus.

Though biased and inaccurate as the PTO Report is, it was helpful to StreamCast in making further improvements to the technology and disclosures, since technology development is an ongoing process for the life of any technology. There can and should always be improvement and modifications to active software. StreamCast has made modifications to the Morpheus software that are listed in the following section.

End-users' control and autonomy over their software environments has been under sustained assault, whether from DRM software that try to remotely control and limit what users can do, or spyware and adware that hijack computers, or worms and viruses that increasingly use personal computers to send spam or attack other machines. All of these phenomena have in common that they try to take the user out of the driver's seat and subordinate the user's own choices and preferences to someone else's desires.

Unfortunately, an increasing amount of software (by no means limited to file-sharing software) exhibits this property today. (StopBadware collects a variety of examples that have hidden or

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<sup>13</sup> See What is a Proxy Server and How do they Work, [http://fl.essortment.com/proxiesproxyfi\\_ngt.htm](http://fl.essortment.com/proxiesproxyfi_ngt.htm)

<sup>14</sup> ISP told to block file-sharing in landmark case, <http://www.out-law.com/page-8239>, OUT-LAW News (June 7, 2007)

inadequately disclosed behaviors to which users might object. Sony-BMG's "rootkit" copy restriction technology is another example.) A wide variety of popular software has been criticized for confusing users, and the discipline of user interaction design has been gaining prominence over time; user interaction design is a difficult and complex discipline and one in which many software developers have made important mistakes.<sup>15</sup>

Technology and legal industry experts have labeled the PTO Report as a failure for not only not going any deeper than an FTC report done in 2005, which concluded that there is no evidence that using P2P file-sharing programs are any more risk than surfing websites, downloading software, or using e-mail or instant messaging, and that Morpheus presents good disclosures when it comes to informing users and minimizing risks.

At StreamCast we take very seriously the concerns of Congress regarding the development and distribution of our P2P software. The story presented in the PTO Report, strikes a familiar cord and is the similar to the story that the entertainment industry has been propagating over and over again when trying to vilify P2P software and the technology companies behind them.

A thorough and complete examination of Morpheus will demonstrate that it does a vastly superior job informing users, for example, of the automatic uploading inherent in the protocol, than the official commercial BitTorrent client.

#### IV. PROPOSED SOLUTIONS

If noncommercial developers are more likely to keep users informed, then better information and market forces may well solve this problem without the need for government intervention in software design and disclosures. (Open source supplies useful pressure to keep software developers' incentives aligned with users', since users are empowered to directly change features they dislike, or even fork off a competing version with design choices they prefer.) The only missing ingredient here is more information for consumers that highlights the good and bad interface features relating to the sharing of files -- precisely the sort of thing that Morpheus, EFF, websites like Slyck and StopBadware, and the press has been doing.

We recommend the public is best advised of the nature of peer-to-peer communications software and of the risks that may inhere in its use in some circumstances through advisories and information about copyright infringement, data security, spyware, viruses, and unwanted exposure to pornography is the best solution to using P2P software safely.

We take pride in our longstanding voluntary efforts to provide online risk avoidance and information to consumers. As this Committee is aware, those efforts predated the FTC's inquiry into these matters and are direct outgrowths of our commitment to our users to risk avoidance by good software design, and full and complete disclosure and information, and to comply fully with the letter and spirit of

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<sup>15</sup> New USPTO File Sharing Report Falls Short on Consumer Protection, <http://www.eff.org/deeplinks/archives/005180.php>

P2PUnited's voluntary "Code of Conduct."<sup>16</sup> We believe that fully empowered and informed users are users in control and are more likely to use Morpheus than other P2P software.

To further the efforts of P2PUnited, and in light of this Committee's concerns, StreamCast will publicly announce its extension of that Code, titled Morpheus Consumer Disclosures Guide, as discussed herein and a draft work-in-progress copy of which attached hereto, which will be published along with a the distribution (deployment) of a software upgrade intended to further address the Committee's concerns, including those where risks do not exist, or are so minimal as to be non-existent but worth even further reducing or eradicating.

The following "consumer-friendly" modifications to Morpheus have been made and recently implemented which we believe further increases consumer awareness of the potential security, privacy, and copyright infringement risks in using the software.

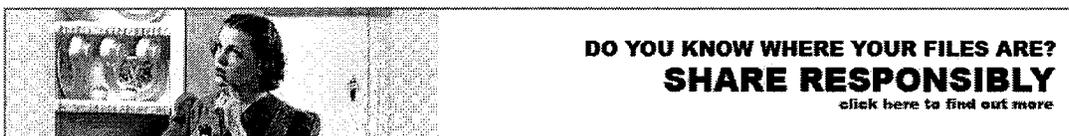
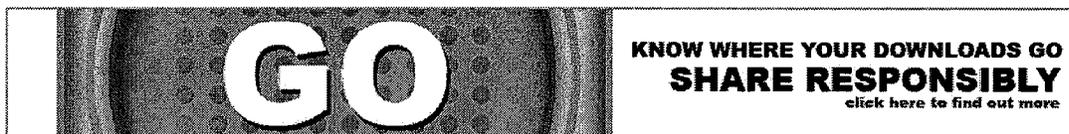
- Currently, a Morpheus user can remove the individual files that they populated within their "Morpheus Shared" and / or "Downloads Folder," however if a Morpheus user attempts to remove the entire "Morpheus Shared" folder and/or the "Downloads" folder (not individual files), the folders will reappear in the shared folder list and the files within these folders will continue to be shared. Our new modification will alert the user if they attempt to remove the entire "Morpheus Shared" and / or "Downloads Folder," with a message informing them that the folder and its files will continue to be shared and a link with a detailed explanation is provided.
- Currently the user is not allowed to share the "c:\windows" folder or any sub-folder within on Morpheus. If the user attempts to add a Windows folder, the folder will automatically be removed when the "Apply" button is pressed. Our new modification further informs the user why the folder was not allowed to be shared.
- In addition to Morpheus preventing users from inadvertently sharing the entire contents of their c:\windows" folder, our new modification will send an alert to the user if the user attempts to share their entire "root" drive, such as "c:\", "d:\\" or "e:\\". The user will be alerted that doing so is not advisable and provides the user with a new option to cancel the process.
- Currently within Morpheus to add a shared folder, the user clicks on the "Add" button and then a folder tree window will display for the user to make a folder selection by checking the appropriate boxes. When the user adds a shared folder, they are able to uncheck the "Include Sub Folders" box before clicking on the "Add" button at their option. We have modified this process so that the user is given the checkbox option in the folder tree window and we have relocated the checkbox to a more visible location.
- Upon completion of the installation of Morpheus, a post-install set-up dialog screen appears. StreamCast has modified the existing wording that already advises users to only add folders and files they want to share. The modification further explains to users that downloaded files will be

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<sup>16</sup> See P2PUnited, Member Code of Conduct (Sept. 2003), <http://wiki.morpheus.com/%7Ep2punitied/code.php>

shared automatically. We also added a “click here” link where the user can go to for even more information.

It is anticipated that prior to July 20, 2007, StreamCast will launch an extensive public information campaign and will utilize at least 5% of its available advertising space within Morpheus (and other means within Morpheus Ultra) to run various types of ads to further alert its users to the potential privacy, security and copyright infringement risks by using Morpheus P2P software. These ads will provide quick links to more detailed information that will be available also within Morpheus and through Morpheus’ website. We anticipate that we will serve approximately 2.5 million ad impressions daily with this public service-like advertising. Below is the initial banner-style ads that propose to run, with new ads and types to be added throughout the year;

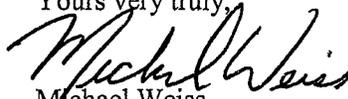


In addition to ongoing modifications within Morpheus and our media campaign, we accept the Committee’s invitation to provide further suggestions and offer up some common sense solutions which we believe should be enacted as soon as practical in both the private and government sectors.

1. The PTO Report stated: *“Concerned legislators had warned that their continued use would compromise national security because government employees using these programs would inadvertently share files containing sensitive or classified data.”* It shouldn’t take an 80 page government document or a Congressional inquiry to mandate that government employees should not be allowed to put sensitive or classified material on their home computers AND don’t allow employees with sensitive or classified material to download any software that connects to unsecured computers – be it P2P file sharing software, instant messaging software, VOiP software, or non-encrypted email – as all these programs and others can pose security threats. Also, government employees should not use laptops that can be stolen or used by unauthorized personnel or family members. Without delay and perhaps no need for Congressional hearings on the matter, the Director of Homeland Security should issue a mandate to all federal, state and local government agencies and all companies in which the government has contracts with to follow these basic rules.
2. Furthermore, any corporation that stores sensitive and private consumer information should be encouraged to follow a similar path in these additional security measures that should be taken to protect the privacy of these records and stop further prevent identity theft.

We hope that our foregoing responses to the Committee’s inquiry will prove to be helpful and provide some balance to the inaccuracies about P2P file-sharing software presented in the PTO Report. StreamCast further pledges its cooperation with the Committee and other government agencies to provide consumers with as safe an environment as possible when using the Morpheus software. We wish to once again thank Representatives Waxman and Davis and the other Committee members, as well as the Committee staffers, for providing us this forum to address your concerns.

Yours very truly,



Michael Weiss

CEO

StreamCast Networks, Inc

Exhibit "1"

Personal Computer Magazine, July 5, 2007

"The internet was invented to allow people to easily share files and information. But ever since the original Napster launched in 1999, file sharing has had a bad name. This is due to the fact that people quickly realized they could easily find and download files that they weren't supposed to, such as illegally copied music mp3s.

**Peer pressure**

There are two main ways to share a file between lots of users. The traditional and familiar client-server method is to put the file on a central server and allow multiple clients (PCs) to access it directly.

There's no need for any communications between the clients – all they need to do is talk to the server. But this means that the server has to be able to cope with delivering multiple copies of the file to lots of clients simultaneously, otherwise the server becomes a bottleneck. For sharing via the relatively low-bandwidth internet this can obviously be a major problem, leading to high costs and congestion at the server.

A peer-to-peer architecture simply does away with the central server and allows any PC connected to the network (a peer) to act as both a client and a server. Peers can then communicate directly with each other to obtain the files they need. This gives several benefits, the most important being data redundancy and no need for massive bandwidth on any one peer machine. A peer can limit peer connections or file downloads depending on how much bandwidth it has available.

Napster used a proprietary P2P protocol to organise the downloading between peers and added a central server to register and validate users and store an index of what files were available on which clients then wrapped it all up in an easy-to-use application that enabled users to search for a particular file or even chat to other Napster users.

Napster wasn't 'true' P2P, but a centralised P2P system, because it relied on a central server for most administrative tasks, and didn't fully use the computing power of the peers.

A 'pure' P2P architecture doesn't need any central servers at all, sharing all the indexing and admin tasks between the clients as well. Such an architecture is often called a decentralised (or fully distributed) P2P network. Examples that are still going strong are the Gnutella and Edonkey networks. The once popular Kazaa, created by the inventors of Skype, was also a decentralised network

**Naming names**

In any discussion of P2P, it's easy to get muddled between application and protocol names, so let's clear a few names out the way first. Napster was an application based on its own proprietary protocol, Kazaa software used the Fasttrack protocol and Gnutella is the name of the protocol. Edonkey is also a protocol.

Public demand for the capabilities unleashed by Napsters's peer-to-peer technology (P2P) spawned a whole host of 'me-too' products and protocols, including Kazaa, Grokster and Gnutella.

For any particular protocol, many client applications are usually available, offering a variety of different features. For example, Gnutella clients include Limewire, Bearshare and MorpheusEmule is the most popular Edonkey client.

Many of these have now gone to the wall; the Napster brand was reborn as a (non-P2P) legitimate music download service, Kazaa seems to be in virtual hibernation and Grokster closed down after the US Supreme Court.

But there's one open source P2P technology – called Bittorrent – that has survived and prospered, even though it's just as open to abuse as any file-sharing technology. Invented in 2001 by programmer Bram Cohen, it was developed as a way to efficiently distribute large files without the need for a dedicated file server. You might consider it a niche application, but a lot of people are using it – more than 150 million according to [www.bittorent.com](http://www.bittorent.com). Statistics published by CacheLogic ([www.cachelogic.com](http://www.cachelogic.com)) in 2004 showed that Bittorrent traffic accounted for more than 35 per cent of all web traffic worldwide. Bittorrent.com itself is currently ranked in the top 2,000 websites according to the website monitoring service Alexa.

Confusingly, Bittorrent is the name of the file-sharing protocol, the company, the associated website and the 'official' free software client, but there are dozens of alternative Bittorrent clients available, such as Utorrent and Azureus. For the purposes of this feature we'll use 'Bittorrent' for the protocol or client and 'Bittorrent.com' for the company.

Bittorrent, the technology, remains open source and is available for anyone to develop an application around, which is another reason it's remained so popular, But how does it work, and just what makes it so suited to sending digital movies or huge Iso files around the world? To answer this, first we need to step back and look at some of the basics of P2P technology.

Downloading via Bittorrent isn't intrinsically any more dangerous than downloading an ordinary file from a website – which these days is perhaps cold comfort.

However, because you're not downloading a single file from one computer, but lots of verified pieces from different computers, it's much harder for malicious users to sneak in corrupted, pornographic or virus infected files; a practice Kazaa users were notorious for.

If the original file contains malware, there's no way to check until you've downloaded it, though. Standard anti-virus and anti-spyware programs are sufficient protection, but there are other security aspects of Bittorrent to be aware of.

Any P2P application requires peers to be able to connect directly to your PC. If you're using a firewall, this means enabling port forwarding for the relevant TCP ports any routers now have pre-configured settings for applications such as Bittorrent If your router supports Universal Plug and Play (Upnp), clients such as the official Bittorrent one, can do all the configuration for you automatically.

Bittorrent needs these ports open to upload to other peers, but downloading will still work. You won't get the best performance, though, as other peers may start to 'snub' you for not offering uploads.

Finally, you should be aware that when you're connected to a public torrent tracker and performing either uploads or downloads, your IP address is easily viewable by the whole Bittorrent world via the client software. It's not designed to be anonymous, so if that concerns you, then either use private trackers or avoid Bittorrent altogether.

### **Torrents, seeds and trackers**

From day one, Cohen designed Bittorrent and its interface to be easy to use, reliable, give fast downloads and avoid the problem of unfair P2P behaviour. In a normal P2P network, once a client has downloaded a file, it has no further incentive to make that file available to other clients. So the P2P network becomes reliant on a few generous clients and becomes very slow and inefficient.

In Bittorrent terminology, clients that are downloading are called 'leechers', whereas clients that are actively uploading are called 'seeds'. A P2P network with only leechers wouldn't work for obvious reasons.

Bittorrent tries to prevent this behaviour by *forcing clients to do simultaneous downloads and uploads and using other tit-for-tat tricks in the protocol*. The easiest way to explain this is to look at how you go about downloading a file in practice.

To download a file via Bittorrent, you first need a Bittorrent client. Probably the best one to start with is the official free client from Bittorrent.com. Although it's a commercial website, you don't have to register and there's lots of free content that you can use to see how it all works.

### **Divide and conquer**

The key to Bittorrent is its unique way of dividing files into small chunks called 'pieces' (typically around 256KB) to download.

A 'torrent' file is a small file (typically a few kilobytes) containing metadata that enables a client to download a file (or a collection of files) over the Bittorrent network.

When a torrent file (with an extension of .torrent) is created, an index of the source file's pieces and data integrity information (an SHA1 hash number) for each piece is generated so that clients can verify they have received uncorrupted data. The protocol subsequently breaks these pieces into 16KB sub-pieces, to queue up TCP transfers (pipelining) and ensure maximum use is made of bandwidth.

To start a P2P download you first need to find a torrent file for the content you're after. You can do this via Bittorrent.com's search engine or any of the torrent search sites, of which [Torrentspy](#) is probably the largest. Be aware that outside the commercial sites, Linux and open source download sites such as [www.distrowatch.com](#) and <http://sourceforge.net>, there's no way to tell whether you're downloading legal content or not. And if you're not sure, it's best to assume the worst.

Torrent files don't contain any of the actual file data; the metadata in the torrent file describes how many pieces of the file need to be downloaded, how big they are plus error-checking information to ensure you're not downloading junk. The file also contains information on the 'tracker' for this file.

Trackers are Bittorrent's way of letting downloaders find each other. They're not involved in downloading the files, and they store no files themselves. In theory, anyone can run a tracker, but normally users rely on publicly available free tracker servers.

Many clients now support trackerless torrents, using DHT (distributed hash table) technology. In this scheme, each client effectively becomes its own tracker, so you don't need one of these tracker server. The downside is that it only works while your PC is turned on.

### **Swarming**

When a file's made available via a torrent file and clients start sharing it, this is known as a swarm. The tracker provides all the members of the swarm with the IP addresses and TCP port numbers of a random selection of other members. Each client then tries to get the full collection of pieces from other clients, which is where the ingenuity of Bittorrent lies.

As soon as you've collected a few pieces of the file, the Bittorrent client makes these available to all the other members of the swarm, so you're forced to simultaneously download and upload data to get the complete file.

This not only stops most of the usual problems of 'greedy' leechers, but also makes downloads faster the more clients there are in the swarm. With a healthy swarm, it's quite easy to saturate all your available download bandwidth, even though each of the swarm members may only be uploading tiny amounts of data.

It's like downloading from a super-fast web server, but without the need for high-end server hardware. This is why it's such a popular way to distribute large files such as Linux distributions, but so unpopular with ISPs trying to maintain 'fair' contention of user bandwidth.

There are downsides to Bittorrent's approach. Clients with a complete version of the file available to upload become seeds. The more seeds and leechers available for a particular torrent, the more efficient the downloading process. This tends to make torrents die out rapidly, with large swarms and fast downloads when a popular torrent first appears, but dying out to a trickle over time.

Of course, there's nothing to stop the Bitorrent protocol from being used for illicit purposes, but that's not the fault of the technology. The biggest story now is the ongoing fight between the torrent search sites, content pirates and the authorities, which is heading slowly but surely for a big showdown. Whatever the outcome, we predict that you'll be hearing a lot more of Bitorrent and other P2P technologies over the coming months.

**StreamCast Networks, Inc. dba Morpheus™**

**Morpheus Consumer Disclosures**

**July 11, 2007**

### **Introduction**

The purpose of the Morpheus Consumer Disclosures User Guide is to outline and illustrate how StreamCast Networks, Inc. and the Morpheus client software operates in providing consumer disclosures to make readily available to users of the software information regarding installation, configuration, privacy, data security, confidentiality, and prevent sharing of inappropriate file content. It further empowers the Morpheus user in controlling the Morpheus application and prevents security breaches and inadvertent file sharing.

This document contains illustrations ("screen shots") captured directly from the Morpheus software and the morpheus.com website, along with reprints of the text included in each figure (either in its entirety or excerpted, as relevant).

The letter codes in the legend correspond to those contained in the Morpheus User Guide Checklist, as shown on page four. The criteria are broken down into three major categories — "Installation & Configuration," "Compliance with Applicable Law" and "Privacy, Security, Confidentiality" — and then into individual requirements, each with its own corresponding letter code.

## **MORPHEUS CONSUMER DISCLOSURES CHECKLIST**

### **INSTALLATION AND CONFIGURATION**

- Morpheus software is not and shall not be installed or upgraded on any user's computer without first obtaining the user's active informed consent.
- Morpheus software (and any other software installed with it) readily is and shall continue to be easily uninstalled by the user and will not leave any functionality or recursive, duping, or share features behind upon reinstallation or new installation without fully informing the user of this.
- Morpheus software and associated user instructions are and shall conspicuously require the user to confirm that the folder(s) containing the file material that the user wishes to make available to other users before making such material available, and is and shall be designed to reasonably prevent the inadvertent designation of the content of the user's entire hard drive (or other principal data repository) as material available to other users.

### **COMPLIANCE WITH APPLICABLE LAW**

- The user of Morpheus' software shall be prominently informed that the use of the software for illegal activities, including particularly infringement of intellectual property laws, is strictly forbidden and may subject the user or the ISP subscriber that the computer accesses the internet through to civil and/or criminal penalties.
- Appropriate online links to one or more responsible sources of information regarding the nature and scope of applicable copyright law is and shall be prominently provided to users.
- Morpheus will comply with the Children's Online Privacy Protection Act, and does and shall continue to cooperate with governmental agencies to eliminate and prosecute trafficking in child pornography and other similar crimes.

### **USER PRIVACY, SECURITY AND CONFIDENTIALITY**

- Morpheus prominently posts user privacy principles on its website.
- Morpheus makes readily available to users of its software information regarding the potential risk of inadvertent exposure to children of inappropriate file content.
- Morpheus does and shall incorporate easy-to-use features into its software that enable adults to restrict use of the software to designated members of their households.
- Morpheus does not and will not, without a user's informed and confirmed consent, disclose personal information about the user or the user's online activities to third parties unless required by law to do so.

**Consumer Disclosure Guide Checklist**

<b>INSTALLATION &amp; CONFIGURATION</b>	<b>Consent</b>	<b>A</b>
	<b>Uninstall</b>	<b>B</b>
	<b>Security</b>	<b>C</b>
<b>COMPLIANCE WITH APPLICABLE LAW</b>	<b>Illegal Use</b>	<b>D</b>
	<b>Copyright Links</b>	<b>E</b>
	<b>COPA / Kid Porn</b>	<b>F</b>
<b>PRIVACY, DATA SECURITY, CONFIDENTIALITY</b>	<b>Privacy Principles</b>	<b>G</b>
	<b>Kid Risk</b>	<b>H</b>
	<b>Password Control</b>	<b>I</b>
	<b>Disclosure Consent</b>	<b>J</b>

**Morpheus Consumer Disclosure Guide Chart Legend**

**A – Installation & Configuration: Consent**

- "Morpheus software is not and shall not be installed on any user's computer without first obtaining the user's active informed consent and shall not be upgraded without the informed consent of the user upon initial installation of automatically upgradeable versions of Morpheus." – Morpheus Consumer Disclosures Guide

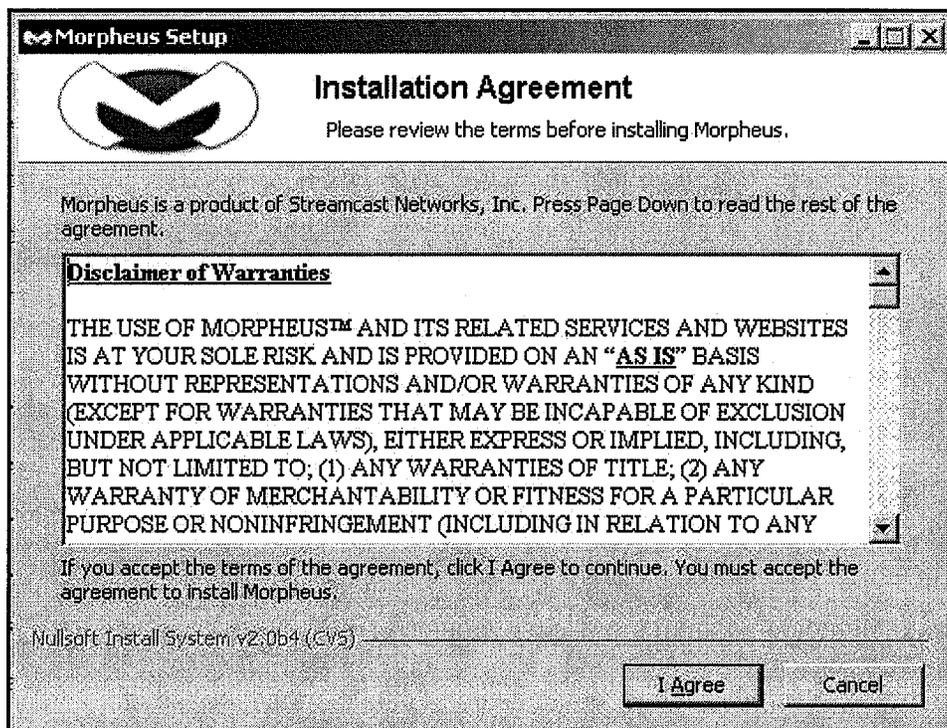


Figure A-1

Text from Figure A-1:

Morpheus Setup

Installation Agreement

Please review the terms before installing Morpheus. Morpheus is a product of StreamCast Networks, Inc. Press Page Down to read the rest of the agreement. If you accept the terms of the agreement, click I agree to continue. You must accept the agreement to install Morpheus.

Users are prompted to scroll down in order read the entire Installation Agreement<sup>1</sup> which is contained in this screen. Users must agree to the terms of this agreement before the Morpheus application is installed.

## B – Installation & Configuration: Uninstall

- "Morpheus software (and any other software installed with it) readily is and shall continue to be easily uninstalled by the user and will not leave any functionality or recursive, duping, or share features behind or upon reinstallation or new installation." – Morpheus Consumer Disclosures Guide

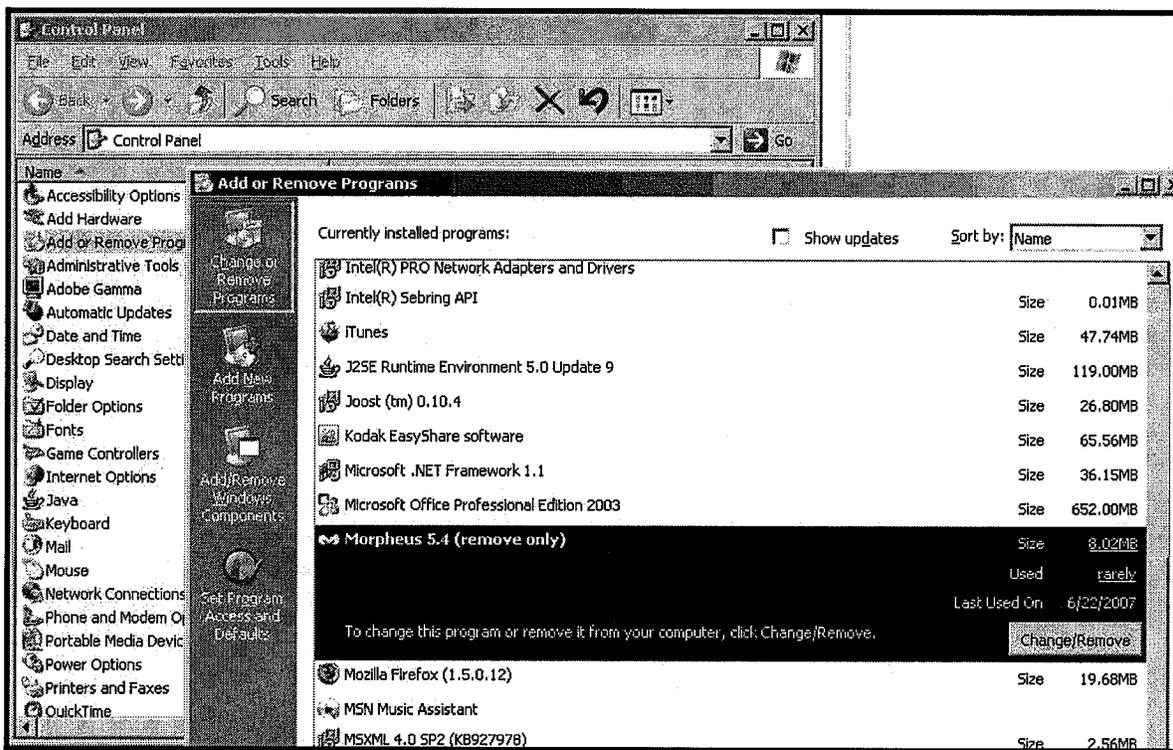


Figure B-1

Text from Figure B-1:

To change this program or remove it from your computer, click Change/Remove.

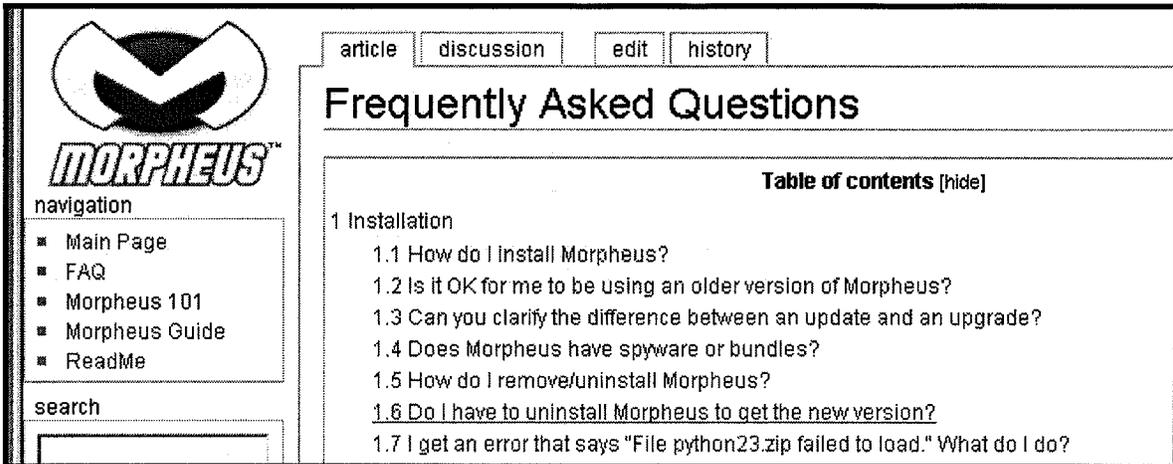


Fig B - 2

**Text from Fig B-2**

1.5 How do I remove/uninstall Morpheus?

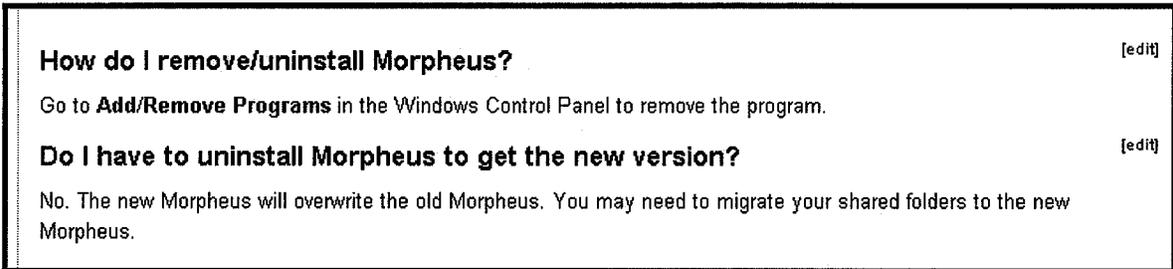


Fig B - 3

**Text from Fig B-3**

1.5 How do I remove/uninstall Morpheus?

Go to **Add/Remove Programs** in the Windows Control Panel to remove the program

**C – Installation & Configuration: Security**

- "Morpheus software and associated user instructions are and shall conspicuously require the user to confirm that the folder(s) containing the file material that the user wishes to make available to other users before making such material available, and is and shall be designed to reasonably prevent the inadvertent designation of the content of the user's entire hard drive (or other principal data repository) as material available to other users." – Morpheus Consumer Disclosures Guide

To prevent inadvertent file-sharing of personal files including personal and sensitive document files such as tax returns or work-related files that shouldn't be made available or files that would compromise individual privacy or national security, this feature is included as part of the install process.

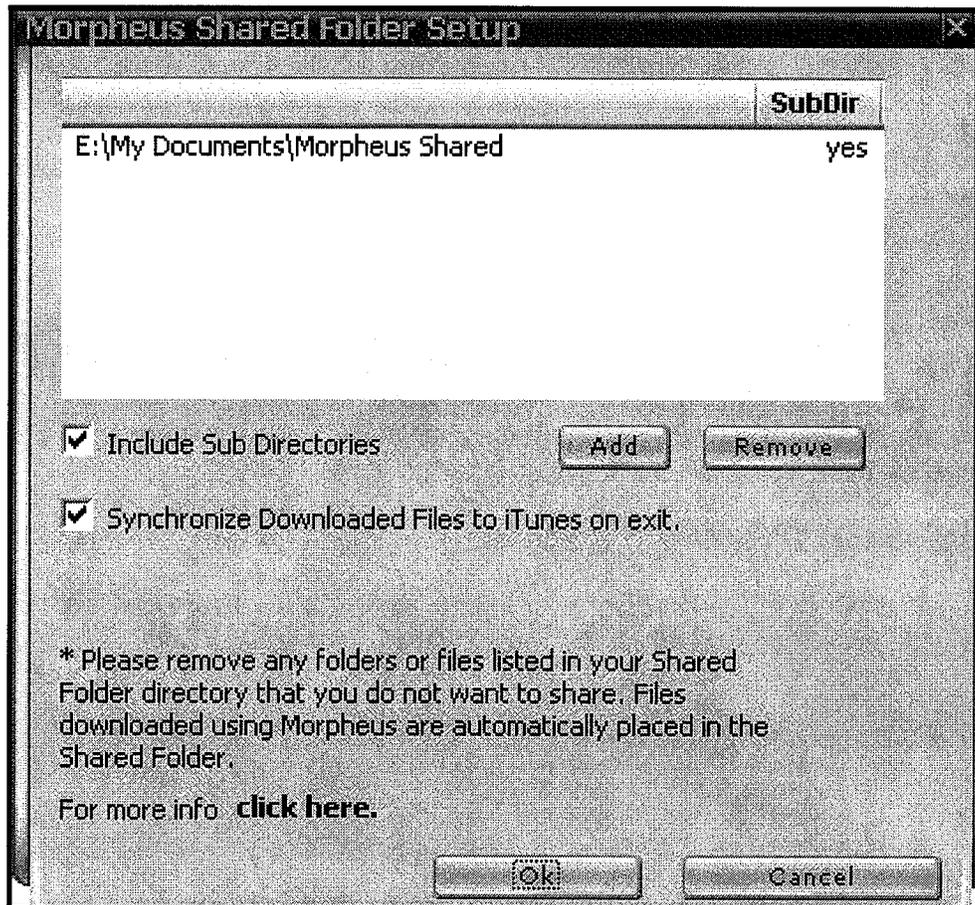


Figure C-1

During the Morpheus install process, users are prompted to Edit the Directory and Subdirectory where shared folders are located. Folders and files can be manipulated during the install process.

Users are given clear and conspicuous options to Setup to Add or Remove files and folders they wish to share.

Text from Figure C-1:

**Morpheus Shared Setup Folder**

Directory

\* Please remove any folders or files listed in your Shared Folder directory that you do not want to share. Files downloaded using Morpheus are automatically placed in the Shared Folder.

For more info [click here](#)

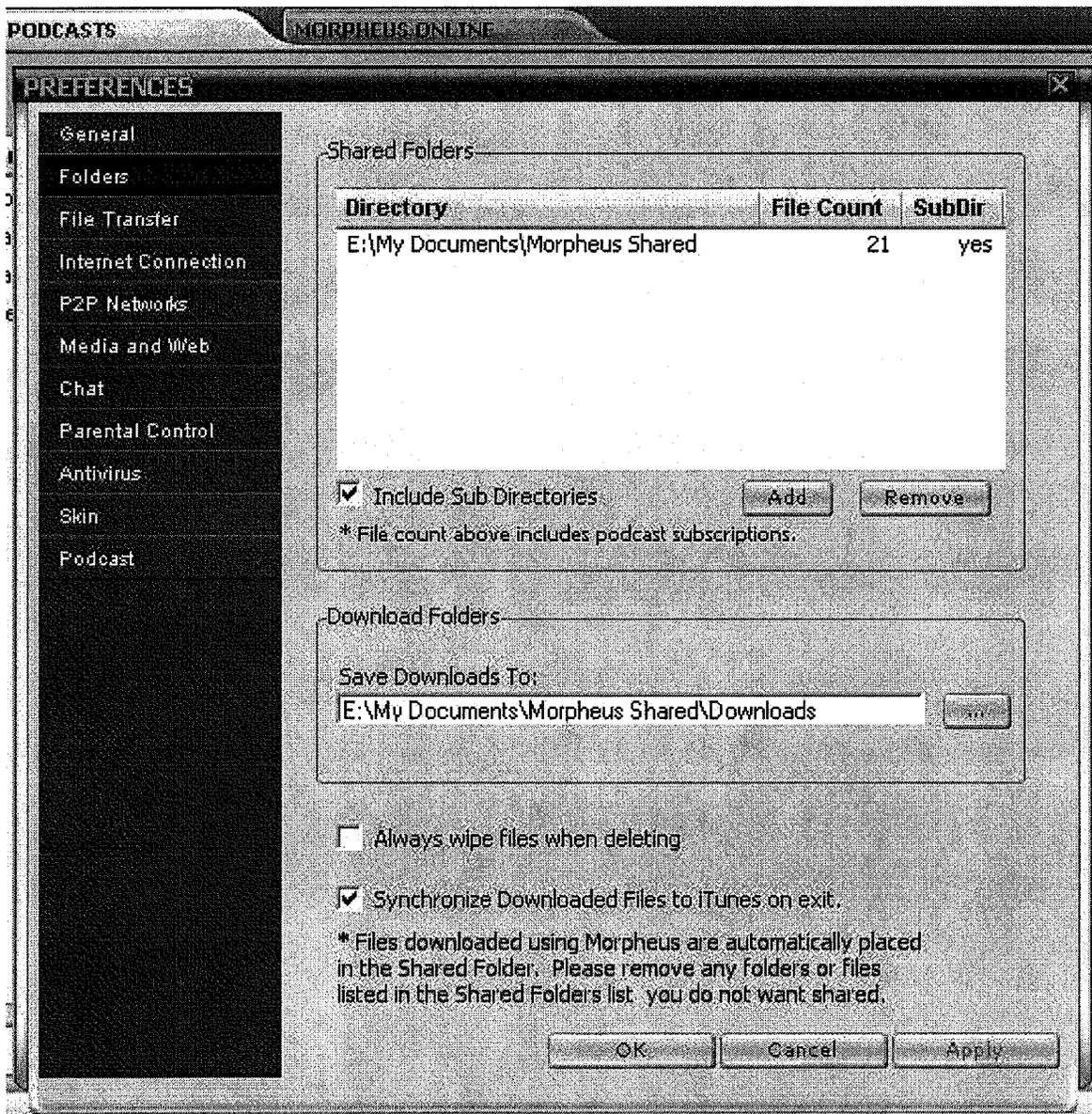


Figure C-2

**Figure C-2**

The Shared Folders Directory, accessible after a user has installed the application by clicking the Preferences tab, allows users to edit or specify which folders they want to share.

Text from Figure C-2

Files downloaded using Morpheus are automatically placed in the Shared Folder. Please remove any folders or files listed in the Shared Folders list you do not want shared.



Figure C-3

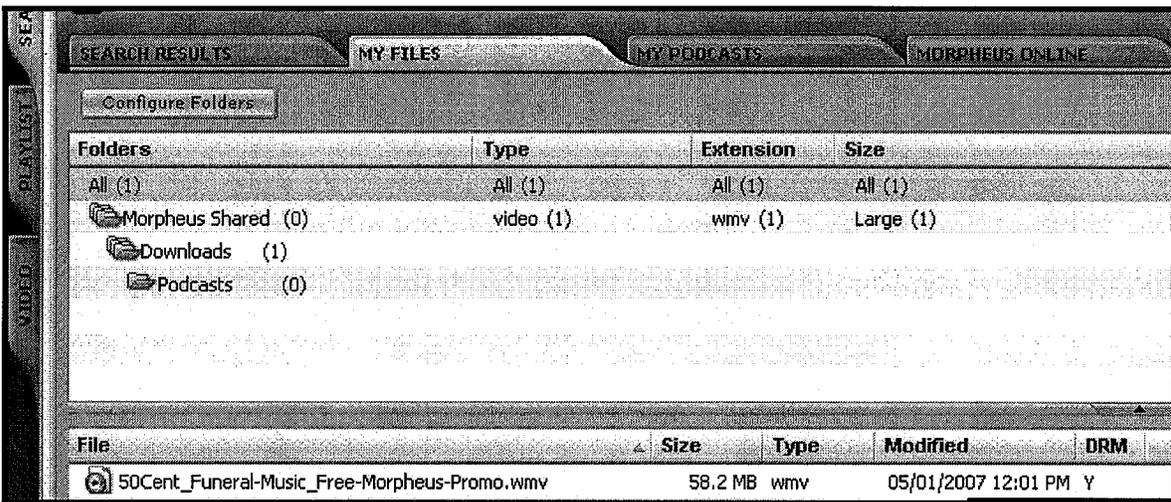


Figure C-4

**Figures C-3 and C-4**

While the Morpheus application is running and not minimized, users have a constant clear and visible display of exactly how many files they are sharing, which folders they are sharing, and options to easily configure those folders and files. This best-of-breed display also shows users how many downloads and uploads are in place; which networks a users is connected to; and whether or not a user's security firewall is active.

This main screen clearly displays to users how many files they are sharing and the type, size, and extensions of those files as well as which folders are being shared. Users can easily configure their shared folders from this main interface.

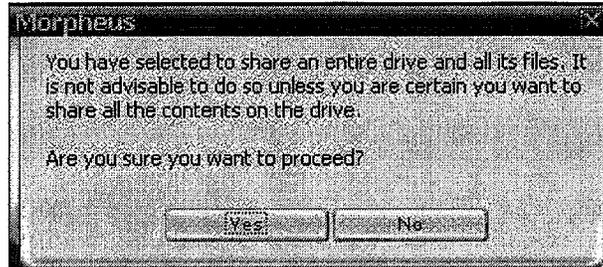


Figure C-5

**Figure C-5**

Users are given a clear and concise warning if they attempt to share an entire drive. To further prevent the risk of sharing their Windows files inadvertently, the sharing of a user's entire Microsoft Windows folder is not allowed.

**Text from Figure C-5**

You have selected to share an entire hard drive and all its files. It is not advisable to do so unless you are certain you want to share all the contents on the drive. Are you sure you want to proceed?

6 Sharing and Transferring
6.1 Do Not Infringe Copyright
6.2 Can other peers obtain files I am currently downloading?
6.3 How do I manage my shared/download folders?
6.4 What if I no longer want to share my files or downloaded files?
6.5 Will my Morpheus Ultra experience be affected by the number of files I share?
6.6 How do I submit my own songs, games, etc?
6.7 How Do I share additional folders?
6.8 Where do I check the status of my downloads/transfers?
6.9 Where is the default 'Downloads' folder located?
6.10 Why aren't my files sharing properly? I never see any uploads?

Fig C-6

Morpheus' own Wiki is an additional source for users to better understand how to user Morpheus safely and securely.

Text from Fig C-6

6. Sharing and Transferring

6.1 **Do Not Infringe Copyright**

SHARE RESPONSIBLY: Using Morpheus™ or Morpheus Ultra™ for the uploading or downloading of copyrighted works without the permission or authorization of the copyright holders may be illegal and could subject you (or the ISP subscriber) to civil and/or criminal liability and penalties. For more information about U.S. copyright law, please visit <http://lcweb.loc.gov/copyright/> and <http://www.copyright.gov/title17.>‡

6.2 **Can other peers obtain files I am currently downloading?**

When a file download is in progress, it's considered as a partial file and those parts already downloaded and in the process of being downloaded will be shared with other users. Partial files are shared as part of the download mesh that is a standard feature of P2P software and a technological advantage of file-sharing applications.

6.3 **How do I manage my shared/download folders?**

Managing your folders is easy! At the top of your screen, go to **Preferences > Folders** and from there you can add or remove shared folders, as well as designate where you want your downloads go.

6.4 **What if I no longer want to share my files or downloaded files?**

Go to **Preferences > Folders** as stated in the question above. Files downloaded using Morpheus are automatically placed in the shared folder. Please remove any folders or files listed in your Shared Folder directory that you do not want to share.

6.5 **Will my Morpheus Ultra experience be affected by the number of files I share?**

Yes, the more shared files available, the better everyone's experience will be

6.6 **How do I submit my own songs, games, etc?**

Simply put them in your share folder. To find your shared folder, look in **Preferences > Folders** and follow the path or add a new folder.

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### 6.7 How Do I share additional folders?

Click on **Preferences > Folders**. There you can specify which folders you want to share with the network. Click the Add button in order to locate other folders that are not already listed, or highlight a folder from the list and click the Remove Button if you no longer want to share it.

### 6.8 Where do I check the status of my downloads/transfers?

By clicking the Traffic Tab, you will be taken to the downloads and uploads section of Morpheus where you will see the status of your transfers. Note that completed downloads will automatically appear in the My Files tab.

### 6.9 Where is the default 'Downloads' folder located?

The path to the 'Downloads' folder is: **My Documents\Morpheus Shared\Downloads**. Morpheus also places a shortcut to this location on the Desktop after installation.

### 7.0 Why aren't my files sharing properly? I never see any uploads?

The 'Uploads' section of Transfer currently doesn't save your completed uploads, and they are cleared from the screen when completed; it will only show uploads actively in progress. Additionally, if you're behind a firewall, note that other firewalled users cannot download a file from you unless you have UPnP functionality activated. To activate UPnP, go to **Preferences > Internet Connection** and check the box for **Try to use UPnP (if firewalled)**

## Security

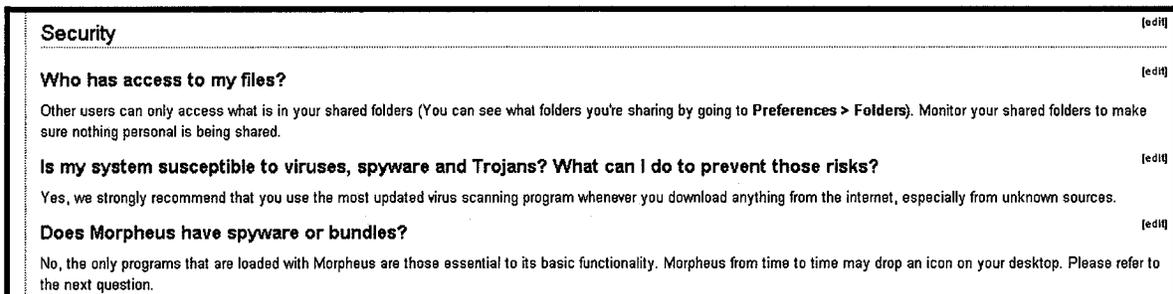


Fig C-7

### Text from Fig C-7

#### Who has access to my files?

Other users can only access what is in your shared and partials (and download) folders (You can see what folders you're sharing by going to **Preferences > Folders**). Partial files can be viewed in the My Files interface. Monitor your shared folders to make sure nothing personal is being shared.

Is my system susceptible to viruses, spyware and Trojans? What can I do to prevent those risks?

Yes, we strongly recommend that you use the most updated virus scanning program whenever you download anything from the internet, especially from unknown sources.

Does Morpheus have spyware or bundles?

Morpheus does not contain or bundle malicious spyware of any kind. Morpheus has an *optional* Morpheus Toolbar that is offered at the time of post-installation. A user must opt-in to install the Morpheus Toolbar and it is not required for Morpheus to function.

#### **D – Compliance with Applicable Law: Illegal Use**

- "The user of Morpheus' is and shall be prominently informed that the use of the software for illegal activities, including particularly infringement of intellectual property laws, is strictly forbidden and may subject the user or the ISP subscriber that the computer accesses the internet through to civil and/or criminal penalties." – Morpheus Consumer Disclosures Guide

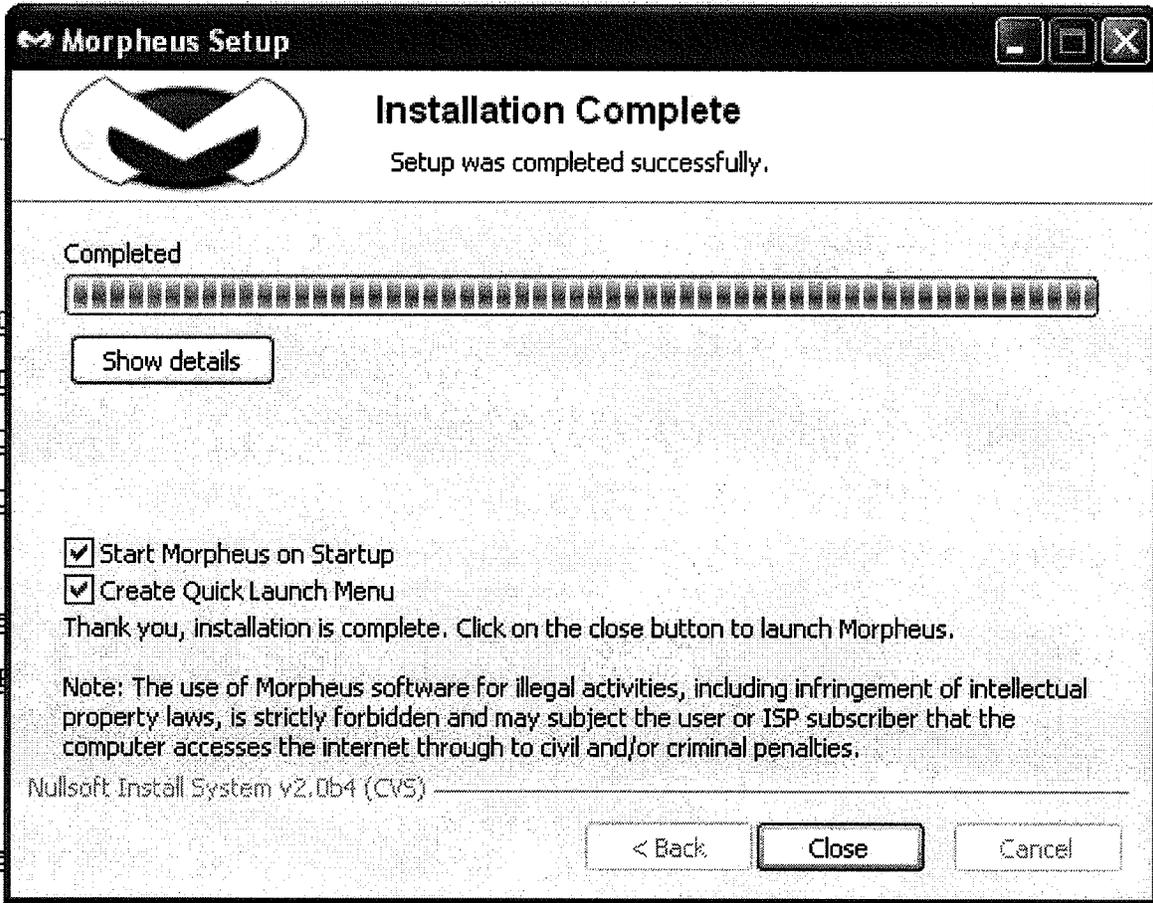


Figure D-1

**Text from Figure D-1:**

Note: The use of Morpheus software for illegal activities, including infringement of intellectual property laws, is strictly forbidden and may subject the user to civil and/or criminal penalties.

The screenshot shows a web browser window displaying the Morpheus website. The address bar shows <http://www.morpheus.com/notices.asp>. The page header includes the Morpheus logo and the tagline "DISCOVER · SHARE · DOWNLOAD audio, videos, pictures, & more\*". A navigation menu contains links for Home, Features, Help, Contact, Resources, and Notices. The main content area is titled "Notices" and contains several sections:

- Copyrights and Inventions**: A section with a large copyright symbol (©) and text explaining that copyright law and laws pertaining to patents and inventions protect original works of authorship and inventions. It states that individuals who reproduce, distribute copies, receive copies, publicly perform or display works or inventions other than their own and without the consent of the owners or holders of rights, or their authorized agents, in original works of authorship or inventions, may be in violation of copyright, patent and other laws applicable to an individual's specific country. StreamCast does not condone copyright, patent or other intellectual property infringement. If you locate any material being shared by a user who you believe may be in violation of copyright or other intellectual property law, please report your concerns to that user directly. This is not intended to be legal advice or counsel. If you have any questions consult your attorney.
- Privacy Principles**: A section stating that Morpheus™ values your anonymity and privacy. Morpheus does not contain or bundle malicious spyware. Upon being served with valid subpoenas or warrants, Morpheus will cooperate with governmental agencies to eliminate and prosecute trafficking in child pornography and other similar crimes.

On the right side of the page, there are three promotional banners:

- Support Morpheus™ Development**: A banner encouraging users to get Morpheus Ultra™ and never see ads again, with a "Download Now" button.
- Click Here for Important Information about Using P2P Software Safely.**: A banner with a link to safety information.
- "...Morpheus consistently outshines the competition."**: A quote from Citel.
- "Morpheus is The One"**: A quote from TIME.

At the bottom of the page, there is a small note: "If there are any folders on your computer you do not wish to share, please be certain to remove them."

Figure D-2

Text from Figure D-2:

Copyright law and laws pertaining to patents and inventions protect original works of authorship and inventions. Individuals who reproduce, distribute copies, receive copies, publicly perform or display works or inventions other than their own and without the consent of the owners or holders of rights, or their authorized agents, in original works of authorship or inventions, may be in violation of copyright, patent and other laws applicable to an individual's specific country.

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**Page 17 of 32**

StreamCast does not condone copyright, patent or other intellectual property infringement. If you locate any material being shared by a user who you believe may be in violation of copyright or other intellectual property law, please report your concerns to that user directly. This is not intended to be legal advice or counsel. If you have any questions consult your attorney.

Text from Figure D-2 continued

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Morpheus' uses of the logos of its competitors or P2P networks is not intended to imply that Morpheus (StreamCast Networks, Inc.) or any of its competitors is or are in any way associated or affiliated with, acquiring, or endorsing each other

StreamCast does not condone copyright, patent or other intellectual property infringement. Due to the nature of peer-to-peer software, StreamCast Networks is unable to monitor or control the files searched for or shared using Morpheus. If you locate any material being shared by a user who you believe may be in violation of copyright or other intellectual property law, please report your concerns to that user directly. This is not intended to be legal advice or counsel. If you have any questions consult your attorney.

**E – Compliance with Applicable Law: Copyright Links**

- "Appropriate online links to one or more responsible sources of information regarding nature and scope of applicable copyright law is and shall be prominently provided to users." – Morpheus Consumer Disclosures Guide

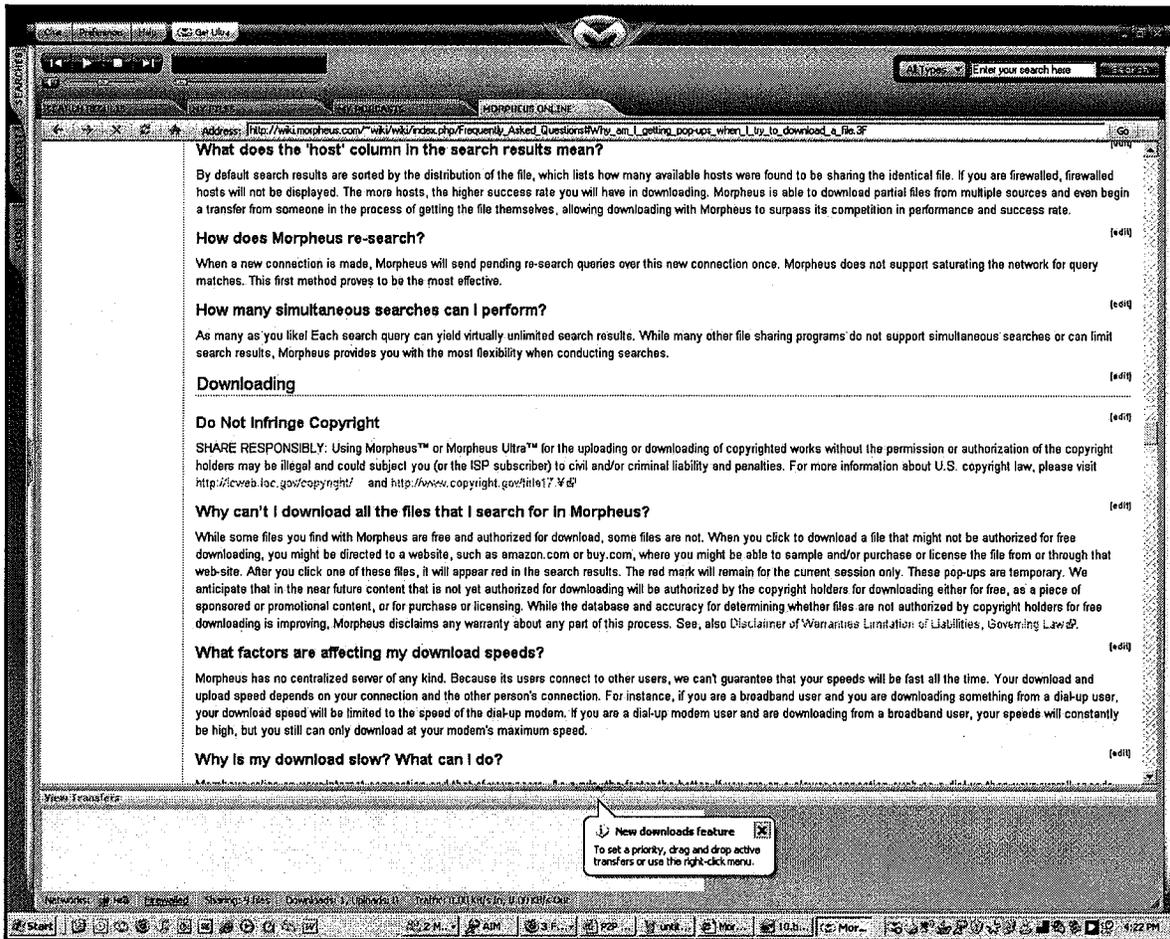


Figure E-1

Text from Figure E-1:

## **Downloading**

### **Do Not Infringe Copyright**

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### **Why can't I download all the files that I search for in Morpheus?**

While some files you find with Morpheus are free and authorized for download, some files are not. When you click to download a file that might not be authorized for free downloading, you might be directed to a website, such as amazon.com or buy.com, where you might be able to sample and/or purchase or license the file from or through that web-site. After you click one of these files, it will appear red in the search results. The red mark will remain for the current session only. These pop-ups are temporary. We anticipate that in the near future content that is not yet authorized for downloading will be authorized by the copyright holders for downloading either for free, as a piece of sponsored or promotional content, or for purchase or licensing. While the database and accuracy for determining whether files are not authorized by copyright holders for free downloading is improving, Morpheus disclaims any warranty about any part of this process. See, also Disclaimer of Warranties Limitation of Liabilities, Governing Law (<http://www.morpheus.com/notices.asp>).

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‡ Some content included on or with Morpheus Ultra™ may be reproduced, uploaded and downloaded.‡

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§ Morpheus assumes no responsibility for a CC-Lookup, and is not involved in the look-up process. Morpheus does not validate or verify whether the copyright holders of works have, in fact, granted users a Creative Commons format license or any other license.

Morpheus is testing a process intended to help prevent files with content not authorized by the copyright holders for free downloading from being downloaded for free. See F.A.Q. regarding filtering.  
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Figure E-2

Text from Figure E-2

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**F – Compliance with Applicable Law: Children’s Online Privacy Protection Act / Kid Porn**

- "Morpheus does and will continue to comply with the Children's Online Privacy Protection Act, and shall cooperate with governmental agencies to eliminate and prosecute trafficking in child pornography and other similar crimes." – Morpheus Consumer Disclosure Guide

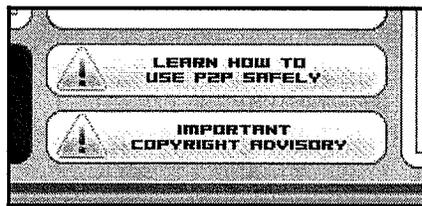


Figure F-1

Text from Fig F-1

LEARN HOW TO USE P2P SAFELY

IMPORTANT COPYRIGHT ADVISORY

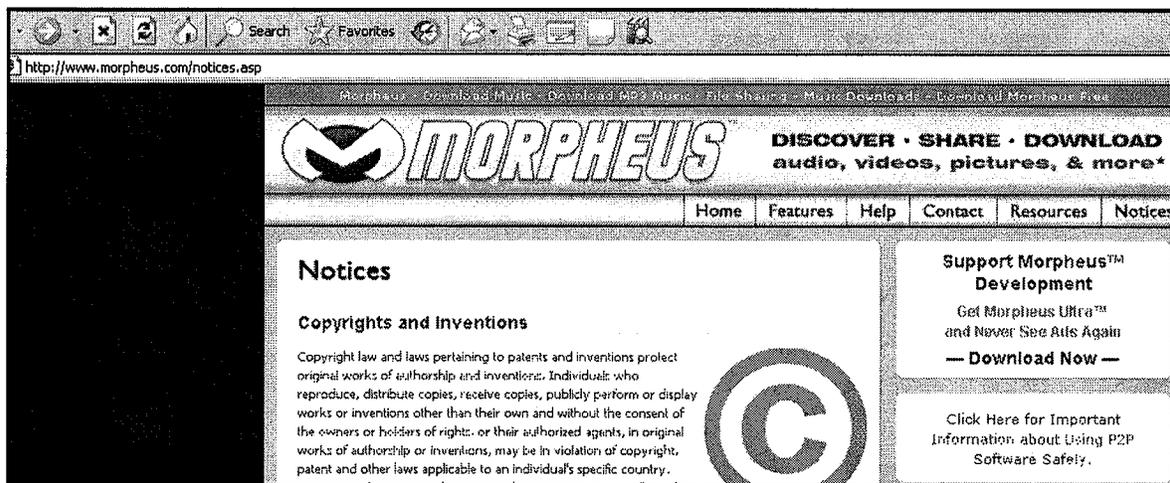


Figure F-2

Text from Fig F-2

Click Here for Important Information about Using P2P Software Safely.

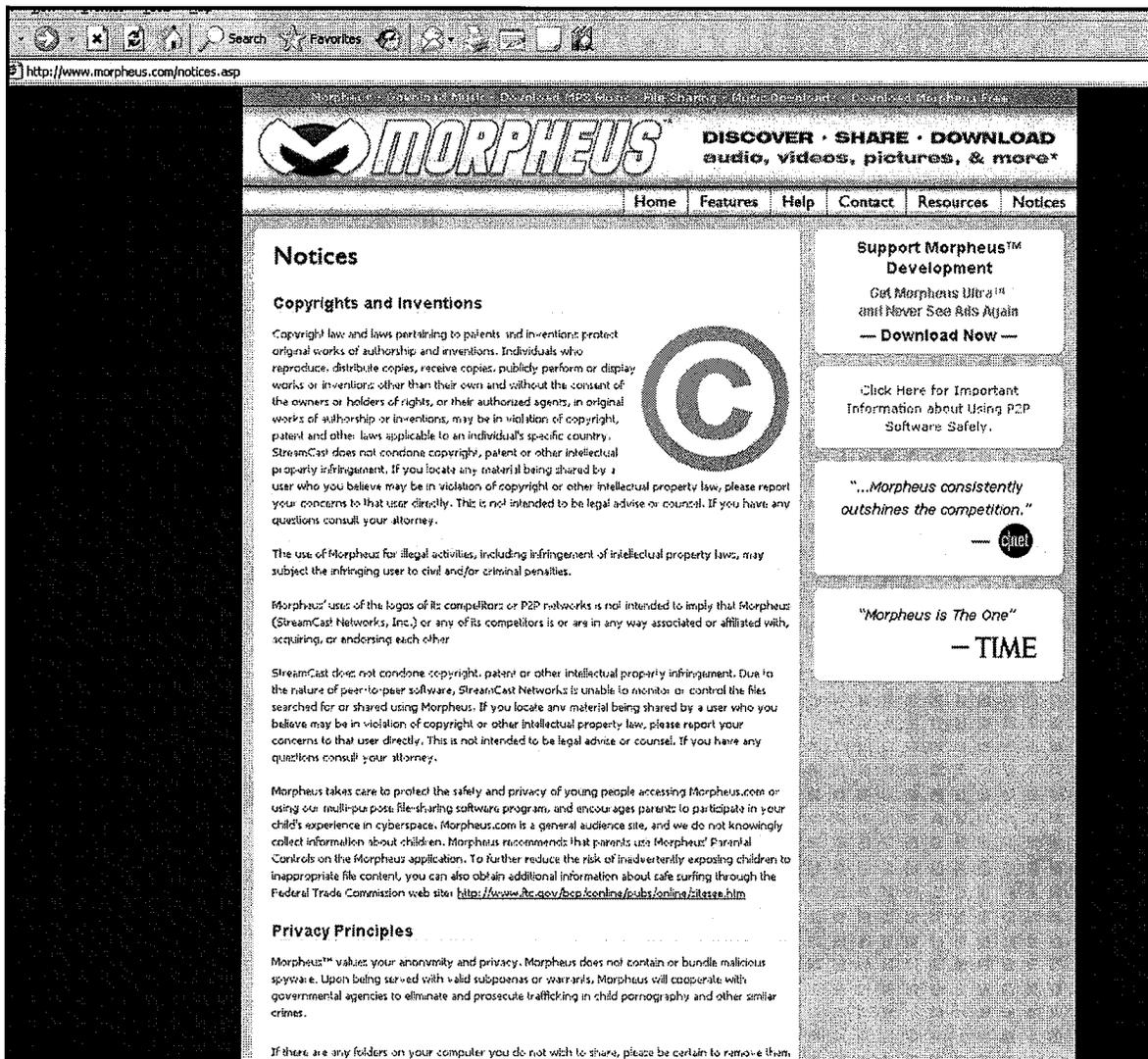


Figure F-3

Excerpt of Text from Figure F-3:

Morpheus takes care to protect the safety and privacy of young people accessing Morpheus.com or using our multi-purpose file-sharing software program, and encourages parents to participate in your child's experience in cyberspace. Morpheus.com is a general audience site, and we do not knowingly collect information about children. Morpheus recommends that parents use Morpheus' Parental Controls on the Morpheus application. To further reduce the risk of inadvertently exposing children to inappropriate file content, you can also obtain additional information about safe surfing through the Federal Trade Commission web site: <http://www.ftc.gov/bcp/conline/pubs/online/sitesee.htm>

**G – Privacy, Security, Confidentiality: Privacy Principles**

"Morpheus does and will continue to prominently post user privacy principles on its website." -  
Morpheus Consumer Disclosures Guide

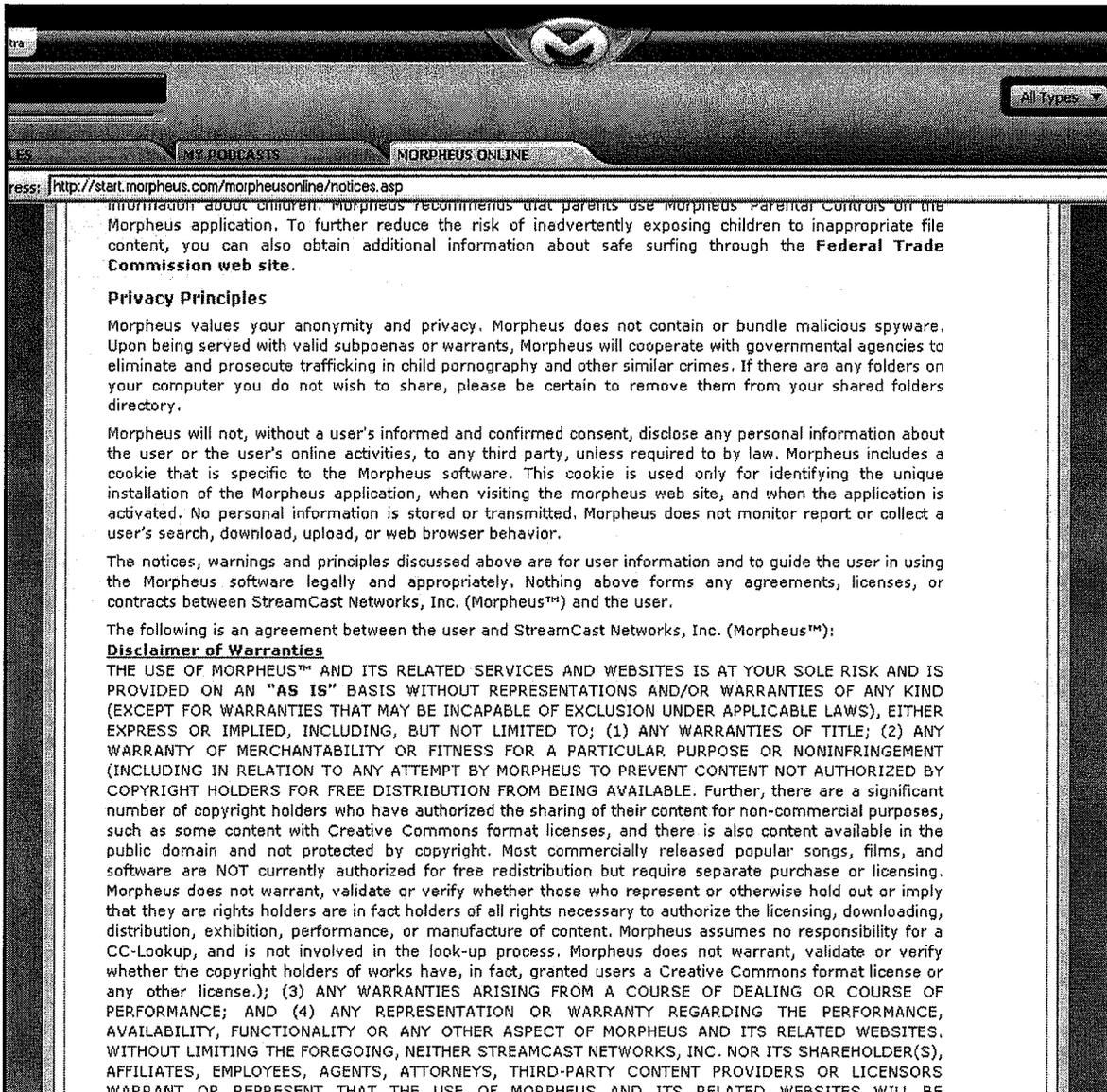


Figure G-1

Excerpt of Text from Figure G-1:

**Privacy Principles**

Morpheus values your anonymity and privacy. Morpheus does not contain or bundle malicious spyware. Upon being served with valid subpoenas or warrants, Morpheus will cooperate with governmental agencies to eliminate and prosecute trafficking in child pornography and other similar crimes. If there are any folders on your computer you do not wish to share, please be certain to remove them from your shared folders directory.

Morpheus will not, without a user's informed and confirmed consent, disclose any personal information about the user or the user's online activities, to any third party, unless required to by law. Morpheus includes a cookie that is specific to the Morpheus software. This cookie is used only for identifying the unique installation of the Morpheus application, when visiting the Morpheus web site, and when the application is activated. No personal information is stored or transmitted. Morpheus does not monitor report or collect a user's search, download, upload, or web browser behavior.

The notices, warnings and principles discussed above are for user information and to guide the user in using the Morpheus software legally and appropriately. Nothing above forms any agreements, licenses, or contracts between StreamCast Networks, Inc. (Morpheus™) and the user.

## H – Privacy, Security, Confidentiality: Kid Risk

- "Morpheus makes readily available to users of its software information regarding the potential risk of inadvertent exposure to children of inappropriate file content." - Morpheus Consumer Disclosures Guide

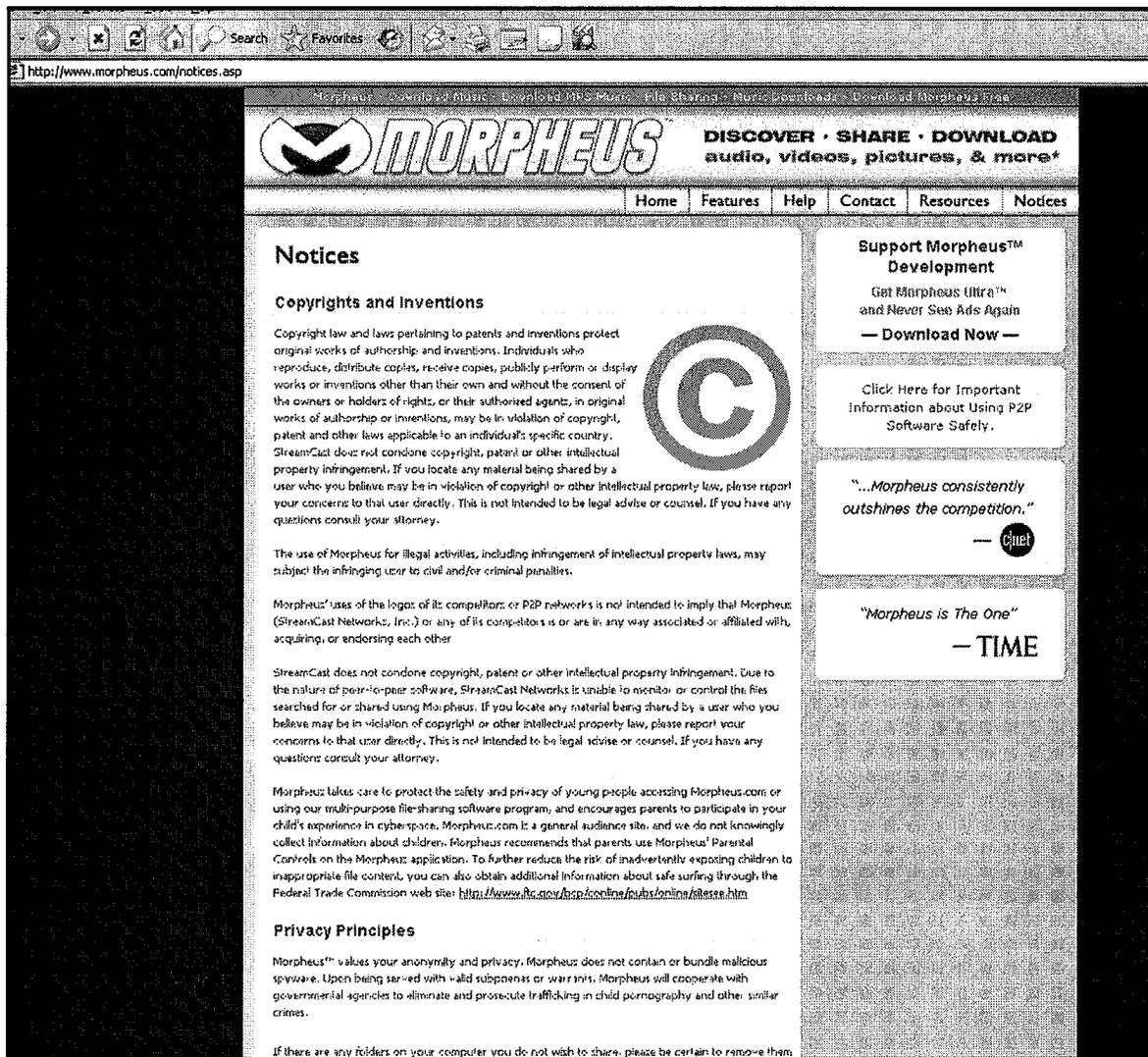


Figure H-1

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**Page 26 of 32**

Excerpt from Text of Image H-1:

Morpheus takes care to protect the safety and privacy of young people accessing Morpheus.com or using our multi-purpose file-sharing software program, and encourages parents to participate in your child's experience in cyberspace. Morpheus.com is a general audience site, and we do not knowingly collect information about children. Morpheus recommends that parents use Morpheus' Parental Controls on the Morpheus application. To further reduce the risk of inadvertently exposing children to inappropriate file content, you can also obtain additional information about safe surfing through the Federal Trade Commission web site <http://www.ftc.gov/bcp/online/pubs/online/sitesee.shtm>.

**I – Privacy, Security and Confidentiality: Password Control**

- "Morpheus does and shall continue to incorporate features into its software that enable adults to restrict use of the software to designated members of their households." – Morpheus Consumer Disclosures Guide

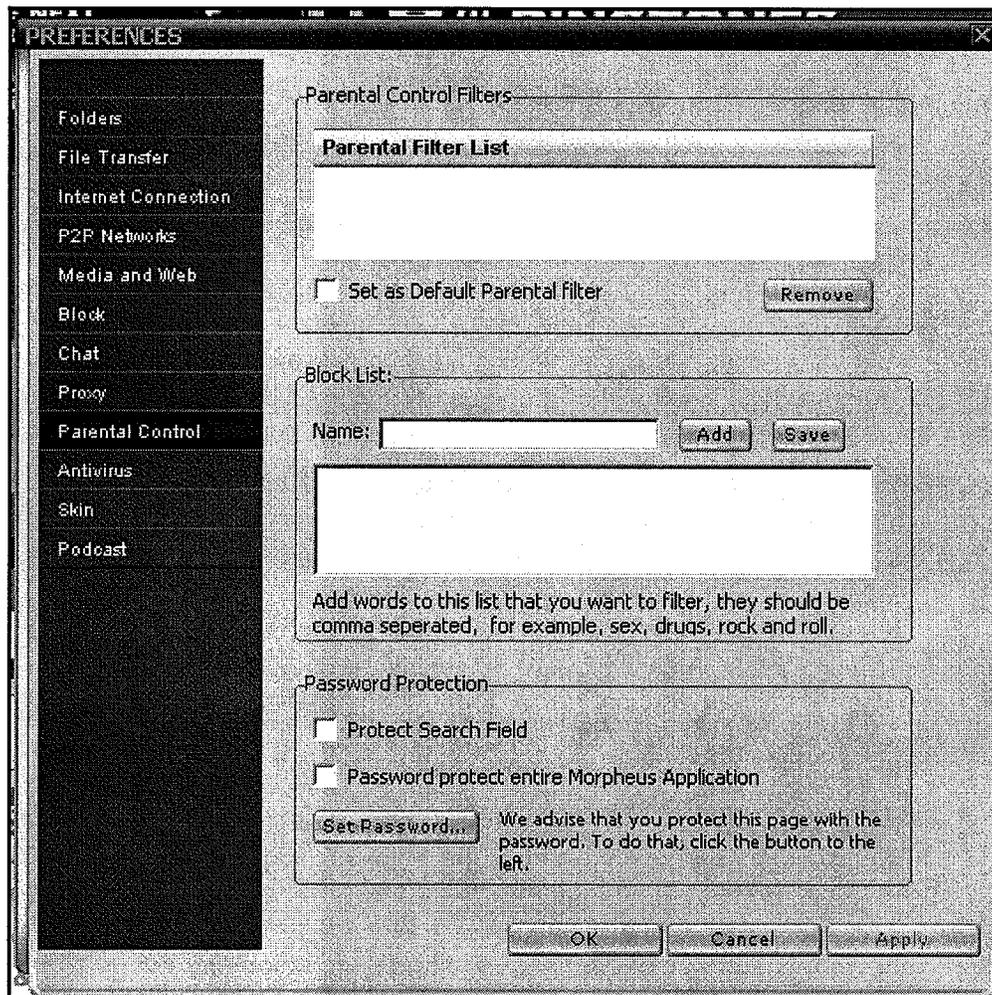


Figure I-1

Text from Figure I-1:

**Parental Control Filters**  
**Parental Filter List**  
**Block List**

Add words to this list that you want to filter, they should be comma separated, for example, sex, drugs, rock and roll.

**Password Protection**

We advise that you protect this page with the password. To do that, click the button to the left.

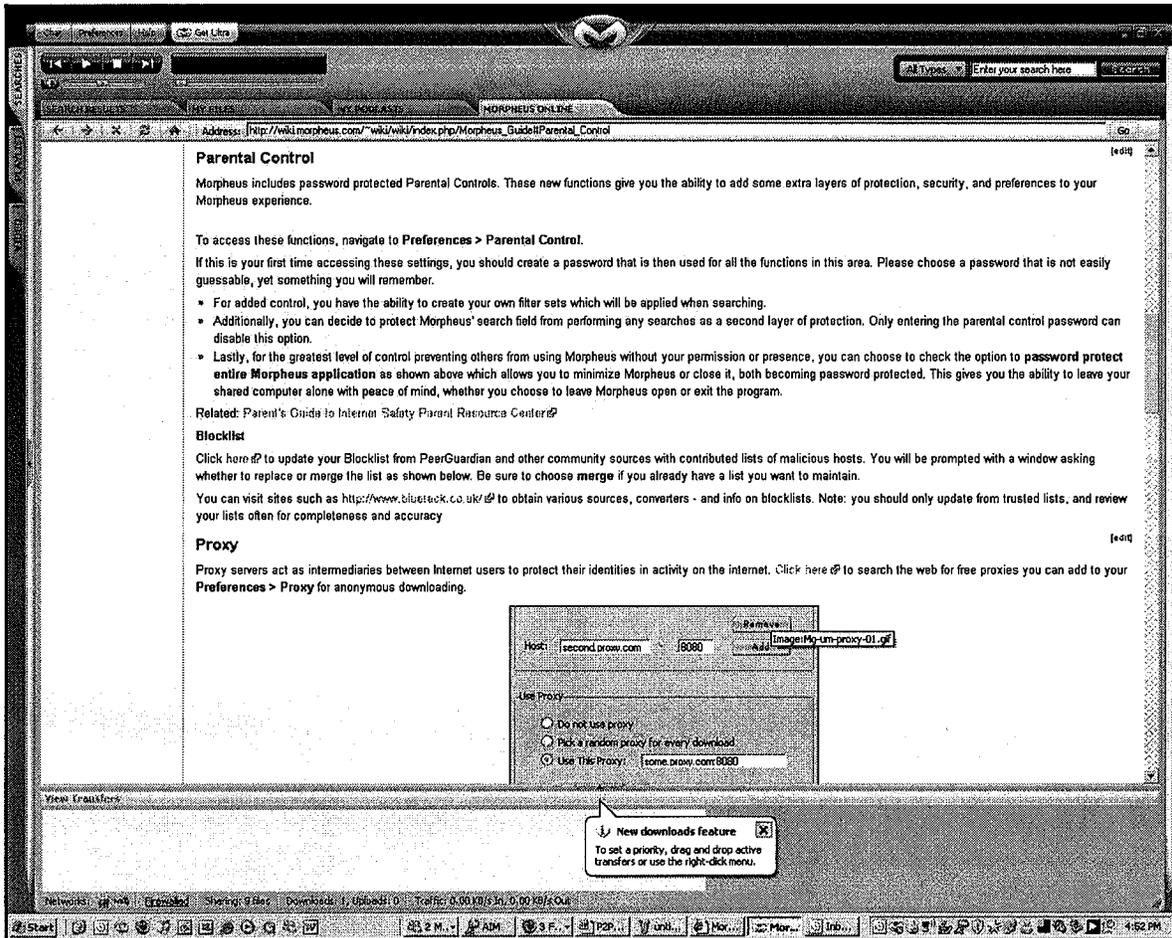


Fig I-2

Text from Figure I-2

**Parental Control**

Morpheus includes password protected Parental Controls. These functions give you the ability to add some extra layers of protection, security, and preferences to your Morpheus experience.

To access these functions, navigate to **Preferences > Parental Control**.

If this is your first time accessing these settings, you should create a password that is then used for all the functions in this area. Please choose a password that is not easily guessable, yet something you will remember.

For added control, you have the ability to create your own filter sets which will be applied when searching.

Additionally, you can decide to protect Morpheus' search field from performing any searches as a second layer of protection. Only entering the parental control password can disable this protective option.

Lastly, for the greatest level of control preventing others from using Morpheus without your permission or presence, you can choose to check the option to **password protect entire Morpheus application** as shown above which allows you to minimize Morpheus or close it, both becoming password protected. This gives you the ability to leave your shared computer alone with peace of mind, whether you choose to leave Morpheus open or exit the program.

Related: [Parent's Guide to Internet Safety Parent Resource Center](http://www.p2punity.org/parents.php) (<http://www.p2punity.org/parents.php>)

## J – Privacy, Security, Confidentiality: Disclosure Consent

- "Morpheus does not and shall not, without a user's informed and confirmed consent, disclose personal information about the user or the user's online activities to third parties unless required by law to do so." - Morpheus Consumer Disclosures Guide

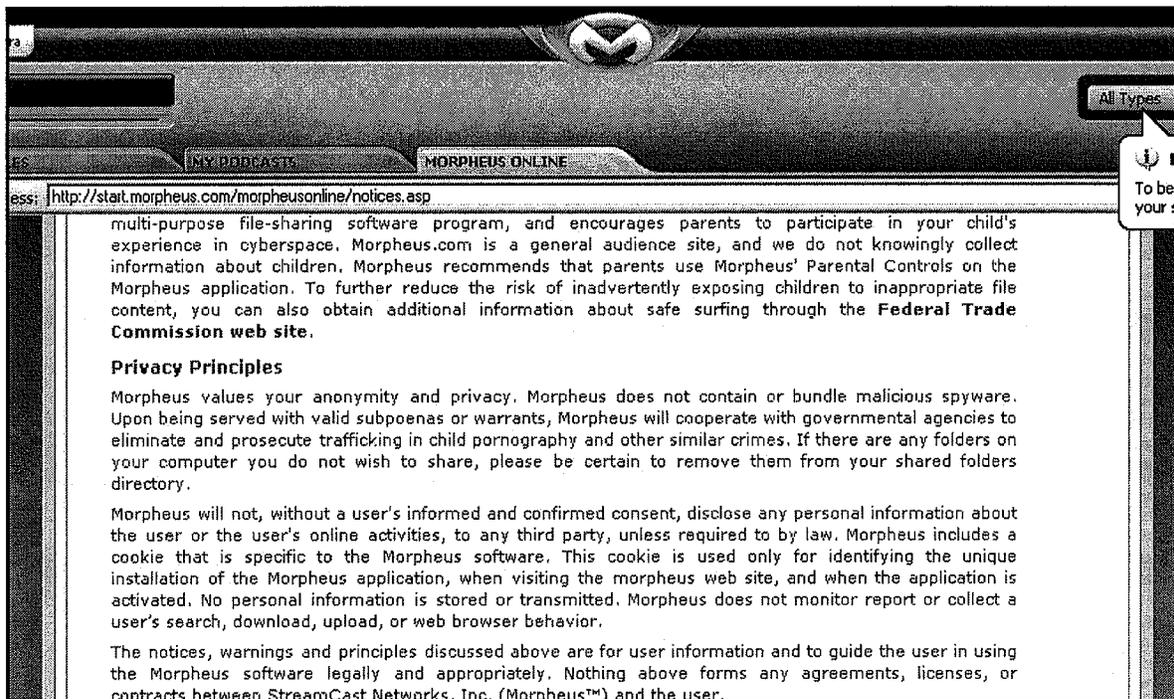


Figure J-1

Text from Figure J-1:

### **Privacy Principles**

Morpheus values your anonymity and privacy. Morpheus does not contain or bundle malicious spyware. Upon being served with valid subpoenas or warrants, Morpheus will cooperate with governmental agencies to eliminate and prosecute trafficking in child pornography and other similar crimes. If there are any folders on your computer you do not wish to share, please be certain to remove them from your shared folders directory.

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**Page 32 of 32**

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**Governing Law**

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